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ABSTRACT

This hearing concerns a bill (S.1645) to: (1) reauthorize funding for Bureau of Indian Affairs (BIA) schools and dormitory facilities; (2) prevent termination or alteration of BIA-funded schools except by specific provision of law or as requested by tribal governing bodies; and (3) require full disclosure to the tribal governing body of any relevant action under consideration by the Department of Interior of BIA. The bill also covers modifications to the funding formula for BIA schools, coordination of educational programs between BIA schools and public schools, extension of gifted and talented programs, details of funding for Navajo Community College, and policies on consultation between the Department of Interior and Indian tribes and organizations. Congress criticizes the BIA for denying the Indian people an effective voice in BIA programs, and supports Indian self-determination through grants to tribally controlled schools. New Mexico Senator DeConcini, a bill sponsor, stated that this bill is a reaction to recent BIA proposals made with tribal consultation. Statements came from senators and from representatives of the Department of Education, national Indian organizations, and tribal councils, schools, and education departments, and addressed the principle of direct government to government consultation on education issues, the failure of BIA to maintain the quality of Indian education, funding problems of cooperative schools integrating BIA and public school students, adult Indian education, measures of enrollment, and Indian eligibility problems. The Department of Interior statement strongly opposed enactment of the bill. (SV)

EB 297925

S. Hrg. 100-429, Pt. 2

INDIAN EDUCATION—Part 2

HEARING BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1645

TO REAUTHORIZE CERTAIN INDIAN EDUCATIONAL PROGRAMS

SEPTEMBER 29, 1987
WASHINGTON, DC



RC 016738

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INDIAN EDUCATION AMENDMENTS ACT

TUESDAY, SEPTEMBER 29, 1987

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:42 a.m., in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, DeConcini, Evans, and Murkowski.

OPENING STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM NEW MEXICO

Senator DeCONCINI [acting chairman]. The Senate Select Committee on Indian Affairs will come to order.

Good morning and welcome to the hearings on S. 1645, the Indian Education Amendments Act of 1987.

This is the second of two hearings held by the Select Committee on Indian Affairs on the subject of Indian education. While we had hoped to hold additional field hearings, our time for the current legislation is dictated in part by activities of the Labor and Human Resources Committee which is drafting an omnibus elementary and secondary education bill as a companion to H.R. 5 and in which we hope to incorporate the provisions of S. 1645.

Because the Labor and Human Resources Committee will be completing their action in mid-October, our committee has scheduled markup on S. 1645 this Friday, October 2. Many of the provisions in S. 1645 are identical to those in H.R. 5 which passed the House in May.

The impetus for both bills comes from certain proposals put forth by the BIA earlier this year, including the proposal to contract with public schools for the operation of all schools now operated by the Bureau. In the Indian community, this proposal has met with something akin to outrage. There was no consultation with tribal leaders or educators.

S. 1645 will correct that and will do other things to make sure that Indian people have a strong voice in the education of their children. It is this committee's objective to work closely with the Indian community and with the administration to make certain the Federal Government lives up to its trust responsibilities. In no area is that responsibility so important as in the area of education of future Indian leaders.

[The text of S. 1645 follows:]

(1)

100TH CONGRESS
1ST SESSION

S. 1645

To reauthorize certain Indian educational programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 7 (legislative day, AUGUST 5), 1987

Mr. DeCONCINI (for himself, Mr. INOUE, Mr. EVANS, Mr. DASCHLE, Mr. BURGESS, Mr. MCCAIN, and Mr. MURKOWSKI) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To reauthorize certain Indian educational programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—INDIAN EDUCATION

4 SHORT TITLE

5 SECTION 101. This title may be cited as the "Indian
6 Education Amendments Act of 1987".

7 STATUTORY AUTHORITY FOR BUREAU FUNDED SCHOOLS

8 SEC. 102. Paragraphs (1), (2), and (3) of subsection (g)
9 of section 1121 of the Education Amendments of 1978 (25
10 U.S.C. 2001(g)) are amended to read as follows:

1 “(1) The Congress hereby specifically authorizes
2 funding under the Act of November 2, 1921 (42 Stat.
3 208; 25 U.S.C. 13) for the operation of each school or
4 dormitory which—

5 “(A) was a Bureau funded school on
6 January 1, 1987, including (i) each school or
7 dormitory facility in operation on that date or for
8 which construction, expansion, or improvement
9 was authorized but which was not in operation
10 before that date; and (ii) each grade level or other
11 program of the school in operation on that date or
12 which was, prior thereto, authorized by the Con-
13 gress, the Secretary, or the Bureau but which had
14 not been initiated prior to such date; or

15 “(B) becomes a Bureau funded school after
16 January 1, 1987, by law, action of the Secretary,
17 or action of the Bureau (including a school, dormi-
18 tory, or grade level or other program expansion
19 identified in a congressional committee's report in
20 connection with an Act or Joint Resolution pro-
21 viding appropriations for fiscal year 1987, or any
22 subsequent fiscal year, for such school, dormitory,
23 grade level, or program expansion).

24 “(2) Notwithstanding any other law, the Secre-
25 tary may not terminate, transfer, or contract to any

1 other entity (except under the Indian Self-Determina-
2 tion and Education Assistance Act or the Indian Self-
3 Determination Grants Act of 1987), consolidate, or
4 substantially curtail a Bureau funded school (including
5 a grade level, program, or facility of the school) au-
6 thorized under this subsection except (A) as hereafter
7 expressly provided by a provision of law, enacted after
8 the date of the enactment of the Indian Education
9 Amendments Act of 1987, relating specifically to the
10 school and the action, or (B) as requested by resolution
11 of the tribal governing body or bodies representing an
12 aggregate of 90 percent or more of the students served
13 by the school.

14 “(3) If the Secretary or any part of the Depart-
15 ment of the Interior or of the Bureau, at any time, has
16 under consideration or review an action subject to
17 paragraph (2), the Secretary shall promptly report that
18 fact to the affected tribal governing body or bodies and
19 to local school board or boards of the school or schools
20 involved. Those bodies shall be (A) kept fully and cur-
21 rently informed during such consideration or review,
22 (B) afforded opportunities to comment as the consider-
23 ation or review progresses, and (C) notified at least 6
24 months prior to the end of the school year preceding
25 the proposed effective date of such an action if a

1 formal decision is made that the action should be
2 taken. Copies of such a notice shall be promptly trans-
3 mitted to the Congress and published in the Federal
4 Register."

5 **EMERGENCY AND SPECIAL SITUATIONS**

6 **SEC. 103.** Subsection (g) of section 1121 of the Educa-
7 tion Amendments of 1978 (25 U.S.C. 2001(g)) is further
8 amended by adding at the end thereof the following new
9 paragraphs (5), (6), and (7) as follows:

10 "(5)(A) A temporary action that would be subject to
11 paragraph (2) may be taken by the Secretary if required by
12 conditions that constitute an immediate hazard to health or
13 safety of the school's students.

14 "(B) The hazard which makes the action necessary must
15 be confirmed by an inspector designated by a tribal governing
16 body of the location of the school or, in the case of a school
17 not located within the jurisdiction of a tribe, designated by a
18 tribal governing body representing a substantial number of
19 the students who attend the school. If an inspector is not
20 designated by a tribal governing body within a reasonable
21 time, the hazard must be confirmed by a State, county, or
22 municipal inspector designated by the Secretary.

23 "(C) If the hazard is confirmed, the action may be taken
24 without regard to paragraphs (2), (3), and (4) but shall be for
25 the shortest possible period and shall terminate before the
26 beginning of the second academic term after the action is

1 taken. An extension of the temporary period may only be
2 allowed (i) if approved by resolution of the tribal governing
3 body or bodies representing an aggregate of 90 percent or
4 more of the students served by the school, or (ii) by compli-
5 ance with paragraphs (2), (3), and (4).

6 “(6) The Assistant Secretary shall prescribe regulations
7 governing the determination of eligibility for schools to
8 become Bureau funded schools and for Bureau funded schools
9 to add grade levels or otherwise expand their programs in a
10 manner which will increase the amount of funding they would
11 be eligible to receive from the Bureau. The regulations shall
12 provide for the eligibility determination to be based on geo-
13 graphic and demographic factors and the history and record
14 of success or failure of (A) the proposed school or school pro-
15 posing to add a grade level or otherwise expand its program,
16 and (B) the public schools or other alternative providers or
17 potential providers of the services which the school proposes
18 to provide with the financial assistance that would be provid-
19 ed by the Bureau. A determination of disapproval under the
20 regulations may not be based on the proximity of other edu-
21 cation facilities. The regulations shall provide for the invita-
22 tion and consideration of information and views from the
23 Indian tribe or tribes affected, the local education agencies in
24 the area, and all other interested parties.

8 DORMITORY CRITERIA

13 “(d)(1) The criteria established under this section may
14 be waived in the same manner as provided for the waiver of
15 standards in section 1121(d) of this Act.

21 “(b) By February 1, 1988, the Assistant Secretary shall
22 submit to the Congress a report detailing the costs associated
23 with, and the actions necessary for, complete compliance
24 with the criteria established under this section.”.

1 ENACTMENT OF REGULATIONS

2 SEC. 105. Section 1123 of the Education Amendments
3 of 1978 (25 U.S.C. 2003) is amended to read as follows:

4 "REGULATIONS

5 "SEC. 1123. (a) The provisions of parts 31, 32, 33, 39,
6 40, 42, and 43 of title 25, Code of Federal Regulations, as in
7 effect on April 1, 1987, shall remain in effect on and after the
8 date of the enactment of the Indian Education Amendments
9 Act of 1987 until changed or amended in accordance with
10 this section.

11 "(b) Such parts referred to in subsection (a) may only be
12 changed or amended as specifically provided by a law en-
13 acted after the date of enactment of the Indian Education
14 Amendments Act of 1987. Except as required (1) to imple-
15 ment Public Law 99-228, (2) to implement a gifted and tal-
16 ented factor in the formula under section 1128(a)(2)(H), or (3)
17 as specifically required by this Act or any other law enacted
18 after the enactment of the Indian Education Amendments
19 Act of 1987, no regulation, guidelines, policies, procedures,
20 or executive action of general effect shall be issued or imple-
21 mented concerning matters included in the parts referred to
22 in subsection (a) except as provided by a law enacted after
23 the date of the enactment of the Indian Education Amend-
24 ments Act of 1987.

25 "(c) The Secretary may waive a provision of a part re-
26 ferred to in subsection (a) for the benefit of an Indian if (1)

1 the waiver is not contrary to another law, and (2) the waiver
 2 was permissible under section 1.2 of part 1 of title 25, Code
 3 of Federal Regulations, as such section was in effect on
 4 April 1, 1987.

5 “(d) On and after the date of the enactment of this sub-
 6 section, in the administration of section 40.1 of part 40, title
 7 25, Code of Federal Regulations, the terms ‘loans or’, ‘loans
 8 and’, and ‘of one-fourth or more degree’ shall be considered
 9 as having been deleted.”.

10 **FORMULA MODIFICATIONS**

11 **SEC. 106.** Subsection (a) of section 1128 of the Educa-
 12 tion Amendments of 1978 (25 U.S.C. 2008) is amended by
 13 adding at the end thereof the following new sentence: “For
 14 fiscal year 1989 and each subsequent fiscal year in which the
 15 formula established under the first sentence of this subsection
 16 is used to determine the amount of funds for each Bureau
 17 funded school, the Secretary shall (i) use a weighted student
 18 unit of 1.2 for students in the seventh and eighth grades; (ii)
 19 consider a school with an average daily attendance of less
 20 than 50 students as having an average daily attendance of 50
 21 students for purposes of implementing the small school ad-
 22 justment factor; and (iii) make provision in the formula for the
 23 provision of residential services on a less than nine-month
 24 basis at a school when the school board and supervisor deter-
 25 mine that a less than nine-month basis will be implemented
 26 for the school year involved.”.

ADMINISTRATIVE COST

1

2 SEC. 107. (a) The text of subsection (c) of section 1128
3 of the Education Amendments of 1978 (25 U.S.C. 2008) is
4 amended to read as follows:

5 "(c) The Secretary shall provide each Bureau funded
6 school (other than a Bureau school) with an administrative
7 cost allowance in addition to the amount allocated under sub-
8 section (a) of this section. The amount provided (subject to
9 the availability of appropriations) shall be either the actual
10 amount needed or an amount determined under a formula
11 which the Secretary prescribes by regulation after consulta-
12 tion with Indian tribes, school boards, Indian educators and
13 education administrators, and others."

14 (b) Section 1128 of the Education Amendments of 1978
15 (25 U.S.C. 2008) is amended by adding at the end the follow-
16 ing new subsection (h):

17 "(h) The term 'administrative cost allowance' as used in
18 this section means the amount that a Bureau funded school
19 (other than a Bureau school) is provided under subsection (c)
20 of this section to meet their necessary additional expenses
21 that a Bureau school does not need to incur. These additional
22 expenses may include, but are not limited to, the cost of in-
23 surance, fiscal management and auditing, legal services, ar-
24 chives, contract or agreement administration, and services for

1 personnel management, procurement, and property manage-
2 ment."

3 LOCAL PROCUREMENT

4 SEC. 108. (a) Section 1129(a)(4) of the Education
5 Amendments of 1978 (25 U.S.C. 2009) is repealed.

6 (b) Section 1129 of such Act (25 U.S.C. 2009) is
7 amended by adding the following new subsection (e) at the
8 end thereof:

9 "(e) Notwithstanding any law or regulation, the supervi-
10 sor of a Bureau school may expend an aggregate of no more
11 than \$25,000 of the amount allotted the school under section
12 1128 to acquire supplies and equipment for the school with-
13 out competitive bidding if for each procurement—

14 "(1) the cost for any single item purchase does
15 not exceed \$10,000;

16 "(2) the school board approves the procurement in
17 advance;

18 "(3) the supervisor certifies that the cost is fair
19 and reasonable;

20 "(4) the documents relating to the procurement
21 executed by the supervisor or other school staff cite
22 this subsection as authority for the procurement; and

23 "(5) the transaction is documented in a journal
24 maintained at the school clearly identifying when the
25 transaction occurred, what was acquired and from
26 whom, the prices paid, the quantities acquired, and any

1 other information the supervisor or board considers rel-
2 evant.”.

3 (c) This section shall take effect on the date of its enact-
4 ment into law, or on October 1, 1987, whichever occurs
5 later.

6 COORDINATED PROGRAMS

7 SEC. 109. Section 1129 of the Education Amendments
8 of 1978 (25 U.S.C. 2009) is amended by adding after subsec-
9 tion (e) the following new subsection:

10 “(f)(1) A tribe or tribes whose children are served by a
11 Bureau school or a program in a Bureau school may enter
12 into a cooperative agreement with a local education agency
13 or a public school concerning the school or program. The
14 agreement may involve coordination of some or all of the
15 following—

16 “(A) the academic program and curriculum (but if
17 implementation of the agreement would result in the
18 loss of any State or regional accreditation the Bureau
19 school has achieved, the agreement must be approved
20 by the Secretary);

21 “(B) support services, including procurement and
22 facilities maintenance; and

23 “(C) transportation.

24 “(2) Except as provided in subparagraph (A) of para-
25 graph (1), an agreement under this subsection shall not be

1 subject to approval by the Secretary or the supervisor of the
2 Bureau school or schools involved.

3 “(3) Subject to the availability of amounts allotted under
4 section 1128 to the Bureau school or schools involved, upon
5 request by the tribe or tribes involved, the Secretary and
6 supervisor shall implement a cooperative agreement entered
7 into under this subsection.”.

8 CONSULTATION

9 SEC. 110. (a) Section 1180 of the Education Amend-
10 ments of 1978 (25 U.S.C. 2010) is amended as follows:

11 (1) by deleting “Bureau” the first time it appears
12 and inserting in lieu thereof “the Secretary and the
13 Bureau”;

14 (2) by adding the following sentences at the end
15 thereof: “The Secretary shall engage in consultation
16 with the tribes as to all matters relating to the Secre-
17 tary’s carrying out of Indian education programs or
18 support services for those programs including (but not
19 limited to) the Secretary’s carrying out of this Act and
20 any other authorities or matters relating to the educa-
21 tion of Indian children or adults. No policy or regula-
22 tion relating to matters for which consultation is re-
23 quired under this section may be initiated or changed
24 prior to such consultation.”; and

1 (3) by redesignating the current text as subsection
2 (a) and adding the following new subsections at the end
3 thereof:

4 "(b)(1) In this section the term 'consultation' means the
5 Secretary's dialog with tribes and Indian organizations
6 during a systematic process of meeting with tribes and Indian
7 organizations as provided in this subsection.

8 "(2) The meetings shall be held in various localities
9 around the United States to facilitate participation. The
10 meetings shall be planned so that one is held at least once
11 every three months and that one is held at least once every
12 two years in each of the Bureau's geographic administrative
13 areas having Bureau funded schools or public schools serving
14 Indian students aided by the Bureau under the Act of April
15 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.).

16 "(3) At least 30 days before each meeting, the Secre-
17 tary shall publish a notice of the meeting in the Federal Reg-
18 ister and send a notice of the meeting to at least those
19 agency school boards, local school boards, Bureau funded
20 schools, and local parent committees or Indian controlled
21 local school board of a public school with students for which
22 the Bureau provides aid under the Act of April 16, 1934, in
23 the Bureau's geographic administrative area in which the
24 meeting is to occur and to each tribal governing body repre-
25 senting a substantial portion of the students at one or more of

1 those schools. The notices shall state the date, time, and
2 place for the meeting and the subjects to be discussed and
3 that adequate time will be provided for the representatives of
4 the recipient of the notice and representatives of other tribes
5 or Indian organizations to ask questions and discuss those
6 subjects or other matters relating to (A) the Secretary's car-
7 rying out of Indian education programs or support services
8 for those programs under this Act and any other authorities,
9 and (B) the education of Indian children or adults in Bureau
10 funded or other schools.

11 “(4) The Secretary shall assure that each meeting in-
12 cludes the provision of information and a dialog on (A) Indian
13 education related budget or policy proposals, and (B) regula-
14 tory, administrative, or procedural changes which will be
15 made or which may be considered during at least the six
16 months following the meeting.

17 “(5) Each meeting will be conducted by the Secretary
18 (or an official designated by the Secretary to represent and
19 speak for the Secretary) who shall be accompanied by the
20 Director of the Office of Indian Education Programs (or an
21 official designated by the Director to represent and speak for
22 the Director) and such other officials and staff as may be
23 desirable to assure responsiveness to questions and that the
24 Secretary or the Secretary's representative and accompany-
25 ing officials and staff can engage in an informative dialog

1 with those attending the meeting concerning the subjects
 2 identified in the notice of the meeting and other matters that
 3 are likely to be considered.

4 “(c) To the maximum extent practicable, the Secretary
 5 shall accommodate a request from a tribe or an Indian orga-
 6 nization for a special consultation meeting under this section.

7 “(d) The Secretary shall carry out the recommendations
 8 made by tribes and Indian organizations during consultation
 9 under this section unless the Secretary determines otherwise
 10 for clear and convincing reasons and advises such tribes and
 11 organizations in writing.

12 “(e) The Secretary shall promptly report any violation
 13 of this section to the Congress.”.

14 (b) Section 1136(a) of the Education Amendments of
 15 1978 (25 U.S.C. 2016(a)) is amended by inserting after the
 16 second sentence therein the following new sentence: “Such
 17 report shall include information on the Secretary’s compli-
 18 ance with section 1130, the recommendations and views re-
 19 ceived from tribes and Indian organizations during the con-
 20 sultation process required by section 1130, and the Secre-
 21 tary’s clear and convincing reasons for not carrying out each
 22 recommendation received during the consultation process
 23 which the Secretary has not carried out.”.

24 **INDIAN EMPLOYMENT PREFERENCE**

25 SEC. 111. Subsection (f)(1) of section 1131 of the Edu-
 26 cation Amendments of 1978 (25 U.S.C. 2011) is amended by

1 deleting "an employee" and inserting in lieu thereof "an ap-
 2 plicant or employee".

3 **PERSONNEL COMPENSATION, RECRUITMENT, AND**
 4 **RETENTION**

5 **SEC. 112. (a)** The Education Amendments of 1978 is
 6 amended by inserting after section 1140B (25 U.S.C. 2022)
 7 the following new section 1140C:

8 **"STUDIES**

9 **"SEC. 1140C. (a)(1)** The Assistant Secretary for Indian
 10 Affairs shall conduct such studies and develop such informa-
 11 tion as may be needed for a report that the Assistant Secre-
 12 tary shall submit to Congress by March 1, 1988, comparing
 13 personnel compensation in Bureau funded schools with that
 14 in the public schools of the local education agencies nearest
 15 the Bureau funded schools and with the averages for public
 16 schools in the States in which the Bureau funded schools are
 17 located. The report shall include detailed information on (A)
 18 the current salaries and personnel benefits for comparable po-
 19 sitions in the Bureau funded and public schools, (B) a com-
 20 parison of starting salaries, tenure, length of service, educa-
 21 tional and certification requirements, length of work year and
 22 work day, and fringe benefits, (C) a projection of the Bureau
 23 funded and public school compensation figures over the next
 24 five years, and (D) such additional information and analysis
 25 as the Assistant Secretary deems appropriate.

1 “(2) The cost of the studies and report (including but not
2 limited to costs for all contracts, travel, and staff assigned to
3 the study) shall be paid from amounts appropriated for the
4 Bureau's Management and Administration Subactivity of the
5 General Administration Activity except that the salaries and
6 personnel benefits of employees detailed to the study from the
7 Bureau's Office of Indian Education Programs may continue
8 to be charged to the amounts appropriated for the Bureau's
9 Education Activity. The staff detailed to work on the studies
10 and report shall include not less than two career employees
11 from the Office of Indian Education who have substantial
12 experience in the administration at the agency level of school
13 operations and in the drafting of personnel regulations, in-
14 cluding but not limited to those under this Act.

15 “(3) The Assistant Secretary shall conduct such future
16 studies of personnel compensation in Bureau funded and
17 public schools as are desirable in carrying out this Act.

18 “(4) The Assistant Secretary may conduct part or all of
19 the studies under this subsection by a contract or contracts
20 with one or more Indian education organizations.

21 “(b)(1) Upon the request of the local school board of a
22 Bureau school, the Assistant Secretary shall grant the super-
23 visor of the school authorization for one or more post differ-
24 entials under section 1131(h)(3) unless the Assistant Secre-
25 tary determines for clear and convincing reasons (and advises

1 the board in writing of those reasons) that certain of the re-
2 quested post differentials should be disapproved or decreased
3 because there is no disparity of compensation for the involved
4 employees or positions in the Bureau school that is either (1)
5 at least 5 percent, or (2) less than 5 percent and affects the
6 recruitment or retention of employees at the school. The re-
7 quest of a local school board under this subsection shall be
8 deemed granted as requested at the end of the 60th day after
9 the request is received in the Bureau's Central Office unless
10 before that time it is approved, approved with modification.
11 or disapproved by the Assistant Secretary.

12 ... "(2) The Assistant Secretary or the supervisor may dis-
13 continue or decrease a post differential authorized under this
14 subsection at the beginning of a school year after either (A)
15 the local school board requests that it be discontinued or de-
16 creased, or (B) the Assistant Secretary or supervisor deter-
17 mines for clear and convincing reasons (and advises the board
18 in writing of those reasons) that there is no disparity of com-
19 pensation that would affect the recruitment or retention of
20 employees at the school after the differential is discontinued
21 or decreased.

22 "(c) On or before February 1 of each year, the Assistant
23 Secretary shall submit a report to Congress describing the
24 requests and grants of authority under this subsection during

1 the previous fiscal year and listing the positions contracted
2 under those grants of authority."

3 (b) Section 1136(a) of the Education Amendments of
4 1978 (25 U.S.C. 2016(a)) is amended by adding at the end
5 thereof the following sentence: "Additional reports to Con-
6 gress are required in sections 1130(e) and 1140C(c)."

7 DEFINITIONS

8 SEC. 113. Section 1139 of the Education Amendments
9 of 1978 (25 U.S.C. 2019) is amended as follows:

10 (1) Clause (3) is amended to read as follows: "(3)
11 the term 'Bureau funded school' means (A) a Bureau
12 school; (B) a contract school; or (C) a school financially
13 assisted under the Indian Self-Determination Grants
14 Act of 1987;"; and

15 (2) Clauses (4) through (10) are redesignated as
16 (6) through (12) and the following new clauses are in-
17 serted after clause (3):

18 "(4) the term 'Bureau school' means a Bureau op-
19 erated elementary or secondary day or boarding school
20 or a Bureau operated dormitory for students attending
21 other than a Bureau school;

22 "(5) the term 'contract school' means an elemen-
23 tary or secondary school or a dormitory which receives
24 financial assistance for its operation under a contract
25 or agreement with the Bureau under section 102,
26 104(1), or 208 of the Indian Self-Determination and

1 Education Assistance Act (25 U.S.C. 450f, 450h(1),
2 and 458d).

3 **INDIAN PREFERENCE**

4 SEC. 114. The Indian preference provisions of section
5 12 of the Indian Reorganization Act (25 U.S.C. 472) shall,
6 on and after the effective date of this section, be considered
7 to be applicable in the case of any office or position within
8 the Office of Indian Education, Department of Education, in-
9 volved in the administration of the Indian Education Act of
10 1972.

11 **TITLE II—SELF-DETERMINATION GRANTS**

12 **SHORT TITLE**

13 SEC. 201. This title may be cited as the "Indian
14 Schools Operations Agreements Act of 1987".

15 **CONGRESSIONAL FINDINGS**

16 SEC. 202. (a) The Congress, after careful review of the
17 Federal Government's historical and special legal relation-
18 ship with, and resulting responsibilities to, American Indian
19 people, finds that—

20 (1) the Indian Self-Determination and Education
21 Assistance Act of 1975, which was a product of the
22 legitimate aspirations and a recognition of the inherent
23 authority of Indian nations, was and is a crucial posi-
24 tive step towards tribal and community control;

25 (2) the Bureau of Indian Affairs' administration
26 and domination of the Public Law 93-638 contracting

1 process has not provided the full opportunity to devel-
2 op leadership skills crucial to the realization of self-
3 government, and has denied to the Indian people an ef-
4 fective voice in the planning and implementation of
5 programs for the benefit of Indians which are respon-
6 sive to the true needs of Indian communities; and

7 (3) the Indian people will never surrender their
8 desire to control their relationships both among them-
9 selves and with the non-Indian governments, organiza-
10 tions, and persons.

11 (b) The Congress further finds that—

12 (1) true self-determination in any society of people
13 is dependent upon an educational process which will
14 ensure the development of qualified people to fulfill
15 meaningful leadership roles;

16 (2) the Federal administration of education for
17 Indian children has not effected the desired level of
18 educational achievement nor created the diverse oppor-
19 tunities and personal satisfaction which education can
20 and should provide;

21 (3) true local control requires the least possible
22 Federal interference; and

23 (4) the time has come to enhance the concepts
24 made manifest in Public Law 93-638.

1

(c) The Congress declares that a major national goal of the United States is to provide the resources, processes, and structures which will enable tribes and local communities to affect the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

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1 tions of Indian tribes and communities. These can best be
2 met through a grant process.

3 (e) The Congress declares its commitment to these poli-
4 cies and its support, to the full extent of its responsibility, for
5 Federal relations with the Indian Nations.

6 (f) The Congress hereby repudiates and rejects any
7 policy of unilateral termination of Federal relations with any
8 Indian Nation.

9 GRANTS AUTHORIZED

10 SEC. 204. (a) Grants under this title shall go into a
11 general operating fund of the school to defray, at the determi-
12 nation of the tribally controlled school board, any expendi-
13 tures, including but not limited to, expenditures for school
14 operations, academic, educational, residential, guidance and
15 counseling, and administrative purposes and for the operation
16 and maintenance (where funds for same are provided at the
17 request of the tribally controlled school board) and for sup-
18 port services, including transportation, of the school. Funds
19 provided pursuant to this title may not be used in connection
20 with religious worship or sectarian instruction.

21 (b) Funds may not be expended for administrative costs
22 (as defined under section 1128(g) of the Education Amend-
23 ments of 1978) in excess of the amount generated for such
24 costs under section 1128(c) of such Act.

25 (c) In the case of a grantee which operates more than
26 one schoolsite, the grantee shall expend no less than 95 per-

1 cent of the funds generated under section 1128 of the Educa-
2 tion Amendments of 1978 for each schoolsite at each school
3 site.

4 GRANTS ELIGIBILITY

5 SEC. 205. (a) To be eligible for grants under this title, a
6 tribally controlled school shall fulfill one of the following
7 criteria—

8 (1) was, on the date of the enactment of this Act,
9 a school which received funds under the authority of
10 the Indian Self-Determination and Education Assist-
11 ance Act (Public Law 93-638);

12 (2) was a school operated (as either an elementary
13 or secondary or combined program) by the Bureau of
14 Indian Affairs on the date of the enactment of this Act,
15 meets the requirements of a tribally controlled school,
16 and has met the requirements of section 206(a); or

17 (3) is a tribally controlled school for which funds
18 from the Bureau of Indian Affairs have not been previ-
19 ously received but which has met the requirements of
20 section 206(b).

21 (b) Any application which has been submitted by a tribe
22 for a school which is not in operation on the date of the
23 enactment of this Act shall be reviewed under the guidelines
24 and regulations in effect at the time of submission, unless the
25 tribe or tribal organization elects to have the application re-
26 viewed under the provisions of section 206.

1 (c) Nothing in this Act may or shall be construed to
2 require a tribe or tribal organization, or allow the coercion of
3 any tribe or tribal organization, to apply for or accept a grant
4 under this Act to plan, conduct, and administer all or parts of
5 any Bureau program. Such applications, and the timing of
6 such applications are strictly voluntary. Nothing in this title
7 shall be construed as allowing or requiring any grant with
8 any other entity, whatsoever.

9 DETERMINATION OF ELIGIBILITY

10 SEC. 206. (a)(1) Within 120 days after receiving a re-
11 quest submitted by an Indian tribe or tribal organization for
12 eligibility under subsection (b) of section 205, the Secretary
13 shall make an initial determination of whether the applicant
14 can maintain a tribally controlled school. The Secretary shall
15 award a grant based upon such application unless the Secre-
16 tary finds by clear and convincing evidence that the services
17 to be provided will be deleterious to the welfare of the Indian
18 beneficiaries of the particular program to be operated under
19 this authority. In the award of a grant under this paragraph,
20 the Secretary shall consider whether the tribe or tribal orga-
21 nization would be deficient in performance under the grant
22 with respect to (A) equipment, (B) bookkeeping and account-
23 ing procedures, (C) substantive knowledge of the program to
24 be operated, (D) adequately trained personnel, or (E) other
25 necessary components of grant performance.

1 (2) An application from a tribal organization shall be
2 accompanied by an action of the tribal governing body au-
3 thorizing such application. A grant shall become effective be-
4 ginning with the academic year succeeding the fiscal year in
5 which such application is made or at an earlier date, at the
6 Secretary's discretion.

7 (3)(A) Whenever the Secretary declines to issue a grant
8 under this section, the Secretary shall (i) state the objections
9 in writing to the tribe or tribal organization within the allot-
10 ted time, (ii) provide assistance to the tribe or tribal organiza-
11 tion to overcome all stated objections, and (iii) provide the
12 tribe or tribal organization a hearing, under the same rules
13 and regulations pertaining to the Indian Self-Determination
14 and Education Assistance Act, and an opportunity to appeal
15 the objection raised.

16 (B) Whenever the Secretary has provided an opportuni-
17 ty and the technical assistance necessary to correct stated
18 objections under subparagraph (A), the Secretary shall recon-
19 sider the amended application within 60 days.

20 (b)(1) The Secretary, within 180 days after receiving a
21 request by an Indian tribe or tribal organization seeking a
22 grant for a tribally controlled school program for which funds
23 from the Bureau of Indian Affairs have not been previously
24 received, shall conduct an eligibility study to determine
25 whether there is justification to maintain a tribally controlled

1 school and shall make an initial determination of eligibility
2 under this title. In making this determination, the Secretary
3 shall give equal weight to all of the following factors:

4 (A) Within the applicant's proposal—

5 (i) the adequacy of facilities or the potential
6 to obtain or provide adequate facilities;

7 (ii) geographic and demographic factors in
8 the affected areas;

9 (iii) adequacy of applicant's program plans;

10 (iv) geographic proximity of comparable
11 public education, provided that no negative deci-
12 sion can be made primarily based upon the prox-
13 imity of such programs; and

14 (v) the wishes of all affected parties, includ-
15 ing but not limited to students, families, tribal
16 governments at both the central and local levels,
17 and school organizations; and

18 (B) with respect to all education services already
19 available—

20 (i) geographic and demographic factors in the
21 affected areas;

22 (ii) adequacy and comparability of programs
23 already available;

1 (iii) consistency of available programs with
2 tribal education codes or tribal legislation to edu-
3 cation; and

4 (iv) the history and success of these services
5 for the proposed population to be served, as deter-
6 mined from all factors and not just standardized
7 examination performance.

8 (2) An application from a tribal organization under this
9 authority shall be accompanied by an action by the tribal
10 governing body authorizing such application. Submission of
11 information on the factors in paragraph (1)(A) shall constitute
12 an adequate submission for purposes of an application under
13 this section, provided that the applicant may also provide
14 such information relative to the factors in paragraph (1)(B) as
15 it considers appropriate. Except as provided in paragraph (3),
16 a grant shall become effective beginning with the academic
17 year succeeding the fiscal year in which such application is
18 made or at an earlier date, at the discretion of the Secretary.
19 Whenever the Secretary declines to issue a grant under this
20 subsection, the Secretary shall (A) state the objections in
21 writing to the tribe or tribal organization within the allotted
22 time, (B) provide assistance to the tribe or tribal organization
23 to overcome all stated objections, and (C) provide the tribe or
24 tribal organization a hearing, under the same rules and regu-
25 lations pertaining to the Indian Self-Determination and Edu-

1 cation Assistance Act, and an opportunity to appeal the ob-
2 jection raised.

3 (9) If the Secretary fails to make a determination within
4 180 days of receipt of the application, such application is
5 approved, provided that in these cases, the grant shall
6 become effective 18 months after the date of application, or
7 an earlier date, at the Secretary's discretion.

8 (c)(1) Expansions of the grade levels offered or modifica-
9 tion to initiate residential services by eligible tribally con-
10 trolled schools shall require an application. Such application
11 shall be by a tribe or be accompanied by an action of the
12 tribal governing body authorizing such application. The Sec-
13 retary, within 120 days after the receipt of an application
14 under this subsection, shall make a final determination on
15 such application. Expansion or change of services or pro-
16 grams within grade levels shall not require Secretarial ap-
17 proval. In reviewing all applications under this subsection,
18 the Secretary shall give equal weight to the factors in subsec-
19 tion (b)(1), and to the enhancement of the quality of the over-
20 all program offered by the applicant. Whenever the Secretary
21 declines to agree to the expansion proposed under this sub-
22 section, the Secretary shall (A) state the objections in writing
23 to the tribe or tribal organization within the allotted time, (B)
24 provide assistance to the tribe or tribal organization to over-
25 come all stated objections, and (C) provide the tribe or tribal

1 organization a hearing under the same rules and regulations
2 pertaining to the Indian Self-Determination and Education
3 Assistance Act and an opportunity to appeal the objection
4 raised.

5 (2) A modification to a grant under this subsection will
6 become effective beginning with the academic year succeed-
7 ing the fiscal year in which such application is made or at an
8 earlier date, at the discretion of the Secretary, except that an
9 expansion involving more than two grade levels, or their
10 equivalent, or the addition of residential services to a pro-
11 gram not now offering them shall become effective 12 months
12 after the application, or earlier, at the discretion of the Secre-
13 tary. Whenever the Secretary declines to modify a grant pur-
14 suant to this subsection, the Secretary shall (A) state the
15 objections in writing to the tribe or tribal organization within
16 the allotted time, (B) provide assistance to the tribe or tribal
17 organization to overcome all stated objections, and (C) pro-
18 vide a tribe or tribal organization a hearing, under the same
19 rules and regulations pertaining to the Indian Self-Determi-
20 nation and Education Assistance Act, and an opportunity to
21 appeal the objection raised.

22 (d) All applications under this section shall be filed with
23 the Office of the Agency Education Superintendent or Edu-
24 cation Programs Officer or Area Education Officer, at the
25 discretion of the Director of the Office of Indian Education

1 Programs (hereinafter referred to as the "Office"), and the
2 calculation of the timeliness will begin on the date of receipt
3 by this Office.

4 (e) The Bureau of Indian Affairs shall submit an annual
5 report to Congress on all applications received and actions
6 taken under this section at the same time as the budget is
7 submitted.

8 GRANTS

9 SEC. 207. (a) Tribally controlled schools meeting at
10 least one of the criteria under section 205(a) or which have a
11 positive determination under section 206 shall receive grants
12 under this Act.

13 (b) The eligibility determination made under section 206
14 shall only be made for the initial grant. Extension shall be
15 automatic, subject to the availability of appropriations and
16 satisfactory performance, as defined in this title.

17 (c)(1) For purposes of this title, satisfactory performance
18 shall be defined only as the submission of the reports stipulat-
19 ed under paragraph (2) and one of the following:

20 (A) Certification or accreditation by a State or re-
21 gional accrediting association as determined by the
22 Secretary of Education, or candidacy in good standing
23 for such accreditation under the rules of the State or
24 regional accrediting association, showing that credits
25 achieved by students within the education programs
26 are or will be accepted at grade level by a State certi-

1 fied or regionally accredited institution provided that
2 the Secretary may waive this requirement for a period
3 not to exceed three years if the Secretary determines
4 that there is a reasonable expectation that candidacy or
5 accreditation will be reached within that time and that
6 the program offered is beneficial to the Indian students.

7 (B) Accreditation by a Tribal Division of Educa-
8 tion.

9 (C) Acceptance of the standards promulgated
10 under section 1121 of the Education Amendments of
11 1978, evaluation of performance under this section to
12 be done in conformance with the regulations pertaining
13 to Bureau operated schools by an outside evaluator
14 chosen by the grantee, but no grantor shall be required
15 to comply with these standards to a higher degree than
16 a comparable Bureau operated school.

17 (D) A positive evaluation conducted once every
18 three years for performance under standards adopted
19 by the contractor under the contract for a school con-
20 tracted under Public Law 93-638 prior to the date of
21 enactment of this title, such evaluation to be conducted
22 by an outside evaluator agreed to by the Secretary and
23 the grantee provided that upon failure to agree on such
24 an evaluator, the tribal authority shall choose the eval-
25 uator or perform the evaluation.

1 The choice of standards shall be consistent with section
2 1121(e) of the Education Amendments of 1978.

3 (2) The reports to be submitted shall be limited to—

4 (A) an annual financial statement reporting reve-
5 nue and expenditures as defined by the cost accounting
6 established by the grantee;

7 (B) a biannual financial audit conducted pursuant
8 to the standards of the Single Audit Act of 1984;

9 (C) an annual submission to the Secretary of the
10 number of students served and a brief description of
11 programs offered under the grant; and

12 (D) a program evaluation conducted by an outside
13 entity, to be based on the standards under paragraph
14 (1).

15 (d) Grants under this title shall not terminate, modify,
16 suspend, or reduce the Federal responsibility to provide such
17 a program. Whenever an Indian tribe requests retrocession of
18 any program receiving a grant under this title, such retroces-
19 sion shall become effective upon a date specified by the Sec-
20 retary not more than 120 days from the date of the request of
21 the tribe or such later date as may be mutually agreed upon
22 by the appropriate Secretary and the tribe.

23 (e) The Secretary shall not make a determination of a
24 lack of satisfactory performance or reassume a program until
25 the Secretary provides notice to the tribal authority authoriz-

1 ing the tribally controlled school, giving the specific deficien-
 2 cies which led to the negative determination and the actions
 3 which are needed to remedy said deficiencies and afford such
 4 authority an opportunity to effect any remedial actions,
 5 except that the Secretary shall provide such technical assist-
 6 ance as is necessary to effect such actions. Such notice and
 7 technical assistance shall be in addition to hearing and appeal
 8 to be conducted pursuant to the regulations established under
 9 section 206.

10 GRANT AMOUNTS

11 SEC. 208. (a) One grant shall be made to each tribally
 12 controlled school for each fiscal year for a sum which is not
 13 less than the total of—

14 (1) the amount the tribally controlled school is eli-
 15 gible to receive under section 1128 of the Education
 16 Amendments of 1978, including, but not limited to,
 17 any funds provided under this or any other authority
 18 for transportation costs;

19 (2) funds provided for operations and maintenance
 20 and other facilities accounts, pursuant to the provisions
 21 of section 1126(d)(1) of the Education Amendments of
 22 1978, if such funds have been requested by the tribally
 23 controlled school;

24 (3) any other provision of law notwithstanding,
 25 funds received and distributed by the Bureau under au-
 26 thority of chapter 1 of the Education Consolidation and

1 Improvement Act of 1981 and the Education of the
2 Handicapped Act, on the same basis as these funds are
3 distributed to Bureau operated programs, provided that
4 programs which are within the basic grant of authority
5 under the legislation for funds so distributed are con-
6 ducted within the grantee's program, the Bureau shall
7 place no program priority or activity limitations what-
8 soever upon receipt of these funds; and

9 (4) administrative costs as determined under sec-
10 tion 1128(c)(1) of the Education Amendments of 1978.

11 (b) No grantee receiving a grant shall be held accounta-
12 ble for interest earned on grant funds, pending their disburse-
13 ment for program purposes. Interest derived is not to be used
14 to reduce Federal dollars under the Federal funding levels
15 generated by the contractors under this authority, or any
16 other authority. The investment of Federal dollars must be
17 only in federally insured investments.

18 (c) For the purposes of underrecovery and overrecovery
19 determinations by any Federal agency for any other funds,
20 from whatever source derived, funds received under this title
21 shall not be taken into consideration.

22 **APPLICABILITY OF OTHER STATUTES**

23 **SEC. 209.** All provisions of sections 5, 6, 7, 105, 109,
24 and 110 of the Indian Self-Determination and Education As-
25 sistance Act (Public Law 93-638) except those provisions
26 pertaining to indirect costs and length of contract, shall apply

1 equally to grants under this title. Until 120 days after the
 2 date of enactment of this title, contractors for activities cov-
 3 ered by this title who have a contract under the Indian Self-
 4 Determination and Education Assistance Act in effect upon
 5 such date of enactment shall be afforded an opportunity to
 6 elect to have the provisions of this title apply to such activity.

7 ROLE OF THE DIRECTOR

8 SEC. 210. Applications for grants pursuant to this title
 9 and all application modifications shall be reviewed and ap-
 10 proved by personnel under the direction and control of the
 11 Director of the Office of Indian Education Programs. Re-
 12 quired reports shall be submitted to education personnel
 13 under the direction and control of the Director of such Office.

14 REGULATIONS

15 SEC. 211. The Secretary is authorized to issue regula-
 16 tions relating to the discharge of duties specifically assigned
 17 to the Secretary by this title. In all other matters relating to
 18 the details of planning, development, implementing, and eval-
 19 uating grants under this title, the Secretary shall not issue
 20 regulations. Regulations issued pursuant to this title shall not
 21 have the standing of a Federal statute for the purposes of
 22 judicial review.

23 DEFINITIONS

24 SEC. 212. For the purposes of this title, the term—

1 (1) "eligible Indian student" has the meaning of
2 such term in section 1128(f) of the Education Amend-
3 ments of 1978;

4 (2) "Indian tribe" means any Indian tribe, band,
5 nation, or other organized group or community, includ-
6 ing any Alaska Native Village or regional or village
7 corporation as defined in or established pursuant to the
8 Alaskan Native Claims Settlement Act, which is recog-
9 nized as eligible for the special programs and services
10 provided by the United States to Indians because of
11 their status as Indians;

12 (3) "tribal organization" means the recognized
13 governing body of any Indian tribe; any legally estab-
14 lished organization of Indians which is controlled, sanc-
15 tioned, or chartered by such governing body or which
16 is democratically elected by the adult members of the
17 Indian community to be served by such organization
18 and which includes the maximum participation of Indi-
19 ans in all phases of its activities, except that in any
20 case where a grant is made to an organization to per-
21 form services benefiting more than one Indian tribe,
22 the approval of Indian tribes representing 80 percent of
23 those students attending such a tribally controlled
24 school shall be considered a sufficient prerequisite of
25 tribal authorization for such grant;

1 (4) "Secretary", unless otherwise designated,
2 means the Secretary of the Interior;

3 (5) "tribally controlled school" means a school,
4 operated by a tribe or a tribal organization, enrolling
5 students in grades kindergarten up to grade 12, includ-
6 ing preschools, which is not a local educational agency
7 as defined in this title, and which is not directly admin-
8 istered by the Bureau of Indian Affairs; and

9 (6) "a local educational agency" means a public
10 board of education or other public authority legally
11 constituted within a State for either administrative con-
12 trol or direction of, or to perform a service function for,
13 public elementary or secondary schools in a city,
14 county, township, school district, or other political sub-
15 division of a State, or such combination of school dis-
16 tricts or counties as are recognized in a State as an
17 administrative agency for its public elementary or sec-
18 ondary schools. Such term includes any other public in-
19 stitution or agency having administrative control and
20 direction of a public elementary or secondary school.

1 **TITLE III—OTHER PROGRAMS OF INDIAN**
2 **EDUCATION**

3 **EXTENSIONS OF AUTHORIZATIONS OF OTHER INDIAN**
4 **EDUCATION PROGRAMS**

5 SEC. 301. (a) Section 307(a) of the Indian Elementary
6 and Secondary School Assistance Act (20 U.S.C. 241ff) is
7 amended by—

8 (1) deleting “(i)” after “appropriated”;

9 (2) deleting “October 1, 1986” and inserting in
10 lieu thereof “October 1, 1993”; and

11 (3) deleting the fourth comma and all that follows
12 and inserting in lieu thereof a period.

13 (b)(1) Section 421(g)(1) of the Indian Education Act is
14 amended by deleting “1989” and inserting in lieu thereof
15 “1993”.

16 (2) Section 421(g) of such Act is further amended by
17 deleting paragraph (3).

18 (c)(1) Section 422(c) of the Indian Education Act (20
19 U.S.C. 3385a) is amended by deleting “1986” and inserting
20 in lieu thereof “1993”;

21 (2) Section 422(c) of the Indian Education Act (20
22 U.S.C. 3385a) is further amended by deleting the second sen-
23 tence thereof.

1 (d) Section 423(a) of the Indian Education Act (20
2 U.S.C. 3385b) is amended by deleting "1989" and inserting
3 in lieu thereof "1993".

4 (e) Section 423(d) of the Indian Education Act (20
5 U.S.C. 3385b) is amended to read as follows:

6 "(d) There is authorized to be appropriated for the pur-
7 poses of this section such sums as may be necessary for fiscal
8 year 1989 and each of the next following four fiscal years."

9 (f) Section 442(a) of the Indian Education Act (20
10 U.S.C. 1221g(a)) is amended by deleting "1989" and insert-
11 ing in lieu thereof "1993".

12 PROOF OF ELIGIBILITY

13 SEC. 302. Section 453(a) of the Indian Education Act
14 (20 U.S.C. 1221h(a)) is amended by inserting ", as defined
15 by the tribe, band, or other organized group," immediately
16 after "member".

17 GIFTED AND TALENTED

18 SEC. 303. (a) The Secretary of Education shall establish
19 American Indian Gifted and Talented Centers located at
20 Sinte Gleska College and Navajo Community College, and
21 shall make grants to and enter into contracts with the Sinte
22 Gleska College, the Navajo Community College, and the
23 American Indian Higher Education Consortium for demon-
24 stration projects designed to address the special needs of
25 American Indian gifted and talented elementary and second-
26 ary school students and their families. The grantees shall be

1 authorized to subcontract where appropriate, including with
2 the Children's Television Workshop.

3 (b) Demonstration projects under this section may
4 include—

5 (1) the identification of the special needs of gifted
6 and talented students, particularly at the elementary
7 school level, with attention to the emotional and psy-
8 chosocial needs of these individuals and their families;

9 (2) the conduct of educational psychosocial and
10 developmental activities which hold reasonable promise
11 of resulting in substantial progress toward meeting the
12 educational needs of such gifted and talented children,
13 including, but not limited to, demonstrating and explor-
14 ing the use of American Indian languages and expo-
15 sure to American Indian cultural traditions.

16 (3) the use of public television in meeting the spe-
17 cial educational needs of such gifted and talented chil-
18 dren;

19 (4) leadership programs designed to replicate pro-
20 grams for such children throughout the United States,
21 including the dissemination of information derived from
22 the demonstration projects conducted under this sec-
23 tion; and

1 (5) appropriate research, evaluation, and related
2 activities pertaining to the needs of such children and
3 their families.

4 (c) The Secretary of Education shall facilitate the estab-
5 lishment of a national network of American Indian and
6 Native Hawaiian Gifted and Talented Centers, and ensure
7 that the information developed by these centers shall be read-
8 ily available to the education community at large.

9 (d) In addition to any other amount authorized for such
10 projects, there is authorized to be appropriated \$3,000,000
11 for fiscal year 1988 and for each succeeding fiscal year
12 through fiscal year 1993. Such sums shall remain available
13 until expended.

14 TITLE IV—NAVAJO COMMUNITY COLLEGE

15 AMENDMENTS

16 SEC. 401. (a) Section 5(b)(1) of the Navajo Community
17 College Act (25 U.S.C. 640c-1(b)(1)) is amended by deleting
18 "administrative, academic, and operations and maintenance
19 costs." and inserting in lieu thereof the following: "the fol-
20 lowing factors—

21 "(A) funds for the maintenance and operation
22 of the college, including basic, special, develop-
23 mental, vocational, technical, and special handi-
24 capped education costs, funds for annual capital
25 expenditures, including equipment needs, minor

1 capital improvements and remodeling projects,
2 physical plant maintenance and operation costs,
3 and exceptions and supplemental need account,
4 and costs associated with summer and special in-
5 terest programs;

6 "(B) funds for major capital improvement
7 costs, including internal capital outlay funds and
8 capital improvement projects;

9 "(C) funds for mandatory payments, such as
10 payments due on bonds, loans, notes, or lease
11 purchases; and

12 "(D) funds to support supplemental student
13 services, such as student housing, food service,
14 and the provision of access to books and
15 services."

16 (b) Section 5(b)(2)(A) of such Act is amended to read as
17 follows:

18 "(A) \$5,820 per an Indian student count as
19 determined by the Secretary in accordance with
20 section 2(a)(7) of Public Law 98-192; or".

21 (c) Section 5(b)(2)(B) of such Act is amended by insert-
22 ing immediately before the comma at the end thereof the fol-
23 lowing: "as determined under paragraph (b)(1)".

24 (d) Section 5(b)(2) of such Act is amended by deleting
25 "less" and inserting in lieu thereof "more".

○

Senator DeCONCINI. I look forward to hearing from each witness today to learn how best you think we can do the job we need to do to make true educational opportunities for Indian children a reality now and not at some time in the future.

I first want to yield to the distinguished Senator from Washington, the ranking co-chairman here, for any remarks he may have.

Senator EVANS. Thank you.

I have no initial remarks. I look forward to the panel's testimony.

I guess I would say in passing that some portions of these bills probably wouldn't be necessary if we had the kind of relationship with the Bureau and the divisions that operate these programs I would hope that we will build that better relationship as we go through these bills, go through the hearings, and finally come to legislation which apparently is going to be necessary.

Senator DeCONCINI. Thank you, Senator Evans.

I want to thank the witnesses, and I want to thank Chairman Inouye who will be here later today.

These programs serve approximately 360,000 Native American students attending BIA public schools. Both the reservation and urban Indian communities rely on these vital programs to educate their children from kindergarten through high school.

Parents and leaders of these communities place the highest priority on education. Education is critical to their efforts to achieve economic self-sufficiency.

Like many other Americans, they want a better world for their children and look to a strong education system as the best way to achieve this end. They want quality education for their children, and many have committed themselves to the task of improving Indian education as members of local school boards, parent committees, and tribal councils. Many others have become teachers and school administrators and devoted themselves to serving in the reservation school systems.

This considerable investment in education must not be overlooked. Instead, I believe that it is time for the Federal Government to meet the Indian tribes and its communities halfway, and it can do so by strengthening its commitment to Indian education.

I am going to have the balance of my statement placed in the record at this point.

Without objection, so ordered.

[Prepared statement of Senator DeConcini appears in the appendix.]

Senator DeCONCINI. We welcome the distinguished Senator from New Mexico. Senator Bingaman has been a leader in not only Indian education but in Indian development.

Senator Bingaman, you may proceed.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Thank you very much, Mr. Chairman and Senator Evans.

First, let me commend you and this committee for the commitment you have shown to improving the quality of Indian education.

I think the legislation you will mark up this week is certainly admirable, and I support your efforts.

I would like to briefly summarize the hearing we held in Santa Fe last month, a hearing I chaired under the auspices of the Joint Economic Committee. I want to thank Senator Inouye for his presence at that hearing.

The hearing was well attended and informative. The testimony was valuable; and I want to just mention some of the high points of that, if I may.

We held the hearing to get the reaction of tribal leaders, educators, and community individuals regarding the Bureau of Indian Affairs' proposal to transfer Bureau-operated schools to either tribes or to State governments. I believe the testimony we received was very useful in Congress' consideration of that proposal.

Indian education, like all education in this country, is at a crucial turning point. We see disturbing statistics, on one hand, of increased dropout rates, high incidence of illiteracy, teacher shortages, and severe budget problems. On the other hand, we see some signs of improvement, and I think those need to be acknowledged as well.

Indian education deserves particular examination for two reasons. First the trust relationship between the Federal Government and Indian tribes require us to monitor Indian affairs closely. Second, it is clear from many statistics that Indian students have not fared as well in our educational system, at least in some circumstances, as non-Indian students have.

Those who testified at our hearing focused on three primary concerns. First, the principles of Indian self-determination and the need for a government-to-government policy that will deal with education issues were discussed and stressed throughout the hearing.

Second, we heard continuing expressions of concern that we, and the Bureau, are posing simple solutions to very complex and protracted problems. The third issue discussed was the failure by the Bureau to follow the mandates of Congress in maintaining and monitoring the quality of the Indian educational system under its jurisdiction.

Let me elaborate upon the Bureau's transfer proposal. Indian leaders expressed the fear that the proposal would actually negate Indian control rather than increase it. They said the proposal was counter to the basic idea of self-determination because Indian leaders, educators, and parents were not consulted or involved in the preparation of the Bureau's proposal.

I think Herman Aggoyo, Chairman of the All-Indian Pueblo Council—an organization that represents 19 Pueblos in the State of New Mexico—summed up many of the witnesses concerns. He said, "Any decision regarding the transfer of educational responsibilities cannot be unilateral and without prior consultation and concurrence of the tribes. Such unilateral decision would violate the trust and fiduciary responsibilities the BIA has to the Indian tribes." He then expounded on the legal basis for his statement.

A number of times, we heard that the Bureau's focus, the tribes' focus, and the focus of the States needs to be shifted: They need to seriously consider methods for improving the quality of the educa-

tional system. Specific recommendations for improving the quality of Indian education were made.

One recommendation was that Bureau-operated school facilities and curricula needed to be examined, updated, and improved. The underlying theory was that we should continue with existing programs, but we must conduct a comprehensive analysis of whether the Federal Government has met the financial and legal responsibilities with respect to Indian children.

Critical needs such as special education, drug and substance abuse, and health care education need to be addressed. This point was made by several witnesses.

Witnesses noted that successful school programs that have been established through cooperative efforts between Federal, State, and tribal officials, such as the Santa Fe Indian School, should be identified and highlighted so they can be replicated around the country.

Also, before the hearing concluded, it became clear that some type of Federal, State, and tribal network for educational improvement must be established and maintained, at least in our State of New Mexico. The testimony clearly established the fact that federal and state governments and tribal authorities do not discuss or communicate the methods each contemplates for improving the quality of education.

Another issue raised in the hearing was the disparity between the salaries paid to teachers in Bureau-operated schools and the salaries paid to teachers in the public school system. This disparity, witnesses said, made it very difficult to recruit and maintain a quality teaching force in the Bureau schools. This is an example of something that needs to be addressed jointly and cooperatively by all the officials concerned.

I raised the issue of the Bureau's failure to send to Congress the studies on the quality of education in its schools that were mandated by P.L. 95-561. This law, the Indian Education Amendments of 1978, mandated that a comprehensive report must be filed along with an annual report on the state of the Bureau's educational programs. These reports are long overdue. As of the date of our hearing and, as far as I know, since 1978 when Public Law 95-561 was passed, neither report has been filed with Congress.

The Bureau's spokesperson at the hearing, Mr. Ronal Eden, the acting deputy to the Assistant Secretary for Indian Affairs, assured us that the Bureau had received Congress message. He said the Bureau would submit a draft of the annual report and a draft plan for improving Indian education within the next few months.

I think that commitment is a major step forward. I believe these studies, the hearing testimony we received in Santa Fe and, I am sure, the testimony you will receive today will help move us toward a constructive solution to some of these problems.

Obviously, improving the quality of Indian education is going to take a long, concerted span of attention. Perhaps Congress has not done all it should to keep attention focused on this problem. Clearly, the Administration has not given it the priority attention it deserves.

I appreciate the chance to testify here and, again, I compliment the committee for moving forward with this legislation and hope that I can find ways to be helpful to you.

[Prepared statement of Senator Bingaman appears in the appendix.]

Senator DeCONCINI. Thank you, Senator Bingaman.

You mentioned the Congress and the Administration both failing in the area of Indian education. I couldn't agree more with you.

What is the reaction of your State educators if, in fact, the Administration's proposal were to go through with contracting out? Are they there with open arms and willing to take it on?

Senator BINGAMAN. The State officials have great reservations about such an assumption. The testimony we received indicated quite frankly, that the State felt the proposed transfer was not in terms specific enough to give a specific reaction. They are concerned with assurances for funding, due to the taxation structure on Indian lands, and with the present condition of Bureau-operated schools—both in terms of the quality of education and the quality of facilities. In general, the State representatives indicated they would like to work with both the Bureau and the tribes to find ways to improve education on a case-by-case basis. Obviously, they are concerned with any major disruption to any child's education, but I think our State officials are anxious to work with others to improve the overall quality of education in New Mexico. The State Superintendent of Public Instruction, Mr. Alan Morgan, indicated that in the last year or so, the State has tried to become more active in helping tribes and in working with the Bureau to address the educational problems facing Indian students in our State.

Our State has not, as most States have not, taken on the level of responsibility it should for the quality of Indian education. I think the State now realizes that and is trying to improve the situation.

Senator DeCONCINI. Do you think the contracting out might be an alternative?

Senator BINGAMAN. There may be circumstances where an individual school district would be willing to accept such a contract. In fact, some districts in New Mexico currently are successfully contracting to provide education. In other situations, the tribes have assumed responsibility for the education of their children for example, the Zuni Pueblo has taken over Bureau responsibilities and the State has established an accredited school district at Zuni. From all reports, it has worked very well.

Certainly some innovative things can and must be done. I am not here to say we should maintain the status quo. We must look for innovative ways to deal with the quality of education, both on a local and national scale.

I believe the negative reactions we heard to the general proposal for school transfer were a direct outgrowth of the fact that the Indian leaders—at least those who have spoken to me in our State—felt the Bureau had not involved them in the development of whatever was to be proposed. They were left outside the process, and, therefore, they reacted adversely.

Senator DeCONCINI. Senator Evans.

Senator EVANS. I have no specific questions, but I do appreciate the interest of Senator Bingaman and realize that this is going to

be a sticky area for us to try to come up the right kind of legislation that strikes a balance between our giving direction and strong policy direction and, at the same time, not trying to take over and manage in every respect either the schools or the relationship of those schools to the local communities or to the Bureau itself.

Senator BINGAMAN. I think one fact which I am sure is well known to this committee and to which the Bureau's Mr. Ross Swimmer has alluded, should be mentioned, that is, that according to test comparisons, Indian students historically have scored better on standardized testing in the public school system than they have in the BIA school system. I think this is a statistic we must consider. Ultimately the bottom line is that we must act only in the best interests of the students.

If moving more of those students into a public school setting makes sense for the educational achievement of the students, then we need to look at such a move very seriously.

Senator EVANS. It is an interesting statistic. I wonder whether they have also taken into account the potential that there may be a different range of students in BIA schools as opposed to those who are in public schools. So, they may start with tougher educational backgrounds or sparser educational backgrounds from which they have a longer way to go.

Senator BINGAMAN. That is a very good point and I am sure some of today's witnesses who are better able than I will address that issue. However, I think the comprehensive issue of upgrading the quality of Indian education has not received the attention it deserves in recent years, and I commend you for taking the interest.

Senator MURKOWSKI. Mr. Chairman.

Senator DeCONCINI. The gentleman from Alaska.

Senator MURKOWSKI. I wonder if I could ask the Senator from New Mexico if he has had an opportunity to reflect on the merits of the State simply taking over the responsibility of education for all people and educational levels within the States and get the BIA out of the education business.

We have seen an extraordinary experiment in our State of Alaska that seems to be working very well, and we can belabor the role of the BIA in providing education for our American Indian people until the cows come home, and I think this committee has been involved in it as to the alternative merits of the States simply moving in.

It is an obligation that we certainly have, and I wonder if you have an opinion on it.

Senator BINGAMAN. Before seriously considering such a proposal in our State, the Indian community must be assured that the Federal Government would not use the device of getting the Bureau out of education merely as a way of reducing Federal support for improvements in Indian education. There is a very real suspicion on the part of Indian leaders in our State that this plan is a Trojan horse. In other words, many believe the Federal Government wants to eliminate its responsibility in the area of Indian education and the way to do it is to transfer it to someone else.

Senator MURKOWSKI. Is there a perception in your State that the BIA educational system is better than the system operated by the State of New Mexico?

Senator BINGAMAN. No, but certainly there is a perception that it is the best they have now. Before there was a Bureau-operated system, we basically had no educational system on our Indian reservations. At best, we had a very sparse educational system.

I think the Indian people believe that the State's involvement is certainly appropriate, but they also believe the Federal Government has a major responsibility financially to help in that process.

If a well designed proposal, drafted through the active participation of Indian leaders and community representatives, were brought forward, then people would be willing to consider it. As yet, they have not seen any such thing.

Senator MURKOWSKI. It would seem that the bottom line would be the quality of the education to the American Indian people.

Senator BINGAMAN. No question. That is the bottom line, and I think Mr. Swimmer's proposal has accomplished at least one useful thing: It has focused people's attention on the quality of Indian education and on the need to develop ways to best improve it. However, many in our State are skeptical that the mere transfer of responsibility from the BIA to someone else is the best solution to the real problem.

Senator MURKOWSKI. Well, we would be happy to share our experiences for the sake of observation. You can make up your own mind whether you think it is workable or unworkable.

Senator BINGAMAN. Thank you again, Mr. Chairman, for allowing me to testify.

Senator DeCONCINI. Thank you, Senator Bingaman. We appreciate your testimony and involvement.

Our next witness will be Beryl Dorsett, Assistant Secretary for Elementary and Secondary Education, accompanied by Tom Corwin, Office of Planning, Budget and Evaluation, U.S. Department of Education.

If you would please summarize your statements, they will appear in the record in full.

I regret that, Chairman Evans, I am going to have to leave to go to a hearing at the Judiciary Committee. You can imagine what it is on.

Please proceed.

**STATEMENT OF BERYL DORSETT, ASSISTANT SECRETARY FOR
ELEMENTARY AND SECONDARY EDUCATION, ACCOMPANIED
BY THOMAS M. CORWIN, OFFICE OF PLANNING, BUDGET AND
EVALUATION, U.S. DEPARTMENT OF EDUCATION**

Ms. DORSETT. Good morning, Mr. Chairman and members of the committee.

I am pleased to be here today to discuss S. 1645 which would reauthorize the Indian Education Act. The bill would make no changes to the act's current programs but does contain other provisions affecting the Department of Education.

While we are generally in agreement with the approach taken by S. 1645 not to make major revisions to the current Indian Education Act programs, we have comments about three provisions that affect the Department of Education. However, because S. 1645 would most directly affect the programs of the Department of the

Interior, we defer to that department as to a position on the bill as a whole.

In addition, we recommend your consideration of the Administration's bill to reauthorize the Indian Education Act which contains several changes that we believe would strengthen the current law. I will discuss some of the provisions in the Administration's bill in a few moments, but, first, I would like to comment on three provisions in S. 1645 that affect the Department of Education.

Section 303 of the bill would authorize a new program for gifted and talented Indian children. We have no disagreement with the concept of providing special services to these children, but I would point out that such programs are already eligible and, indeed, are being supported under both Parts A and B of the current act.

In addition, Part provides for competition among eligible Indian organizations and institutions. We believe this approach is preferable to that proposed in section 303 which would direct the Department to award funds to specific organizations to the exclusion of other potential Indian applicants.

In addition, the intent of the language referring to the national network of American Indian and Native Hawaiian Gifted and Talented Centers referred to in section 303 is unclear.

Section 302 of the bill would clarify that, in the definition of "Indian," the reference to an individual's membership in a tribe, band, or other organized group of Indians means membership as defined by that tribe, band, or other organized group. The Department welcomes this clarification of the term "member" as it is used in the act to identify eligible program participants.

I am pleased that the bill does not include provisions like those in H.R. 5 that would effectively preclude the Secretary from ensuring that this program serves only its intended beneficiaries by undermining his authority to make sure that only eligible children are counted for funding purposes.

There is one other provision of S. 1645 that would affect the Department of Education. Under section 114, the Indian preference provisions of the Indian Reorganization Act would be applied to our office of Indian Education Programs. While I fully understand and support the desire to have qualified Indian staff members not only in the Indian education office but also in other Department offices, I strongly object to this provision.

We respond to all applicants for employment in the Department of Education on merit and without regard to race, religion, sex, color, or national origin. Rigorous adherence to this principle and to the Civil Service regulations applicable to the entire Federal Government, puts us in the strongest possible position to select the most qualified candidates, including Indians, for positions in the Office of Indian Education programs and throughout the Department.

Through these procedures, we cast a wide net, and the Secretary's record in the recruitment of women and minorities is an exceptional one. Further, many individuals who are not themselves Indians have served with distinction in the Indian education programs. I, for one, am reluctant to say to them that because they are black, Hispanic, or Asian, they are not qualified or desirable employees.

On the subject of Indian education staff, I would like to take this opportunity to tell you that the Secretary has made a tentative selection for the position of Director of Indian Education in the Department. The paperwork that would complete this selection process is currently under review at the Office of Personnel Management, and we hope to make an announcement very soon.

Mr. Chairman, in June of this year, the Administration submitted to Congress a bill to reauthorize the Indian Education Act. As I mentioned earlier, while our bill does not propose major changes in the act, it does contain a number of amendments that we believe would improve the program's effectiveness considerably. I would like to take a few moments to highlight some key provisions of our proposal.

The major change I would recommend to you is to reauthorize the Indian Education Act as a single statute. Currently, there is no document in which one can read the entire Indian Education Act from start to finish.

At the present time, authorizations for the various programs are scattered as pieces of other laws, including Impact Aid, the Elementary and Secondary Education Act of 1965, and the Adult Education Act. Reauthorization as a single statute would eliminate potential confusion of the sort that I believe resulted in some of the technical problems we have noticed in S. 1645.

For the Part A program of grants to local educational agencies, the Administration's bill contains several new provisions. One of these provisions would revise the formula for allocating funds to school districts so that, in computing payments, "average daily attendance" is used rather than "average daily enrollment" as currently specified in the statute.

Authorized use of the attendance data would reduce the potential for audit problems, because data on average daily enrollment are not readily available to the States. This change would be consistent with similar provisions in other Department programs and would, in fact, conform the program statute to current practice.

In another formula change, the Administration's bill would constrain the average per pupil expenditure factor used in computing payments to school districts to no more than 120 percent but no less than 80 percent of the national average. In recent years, school districts in States that have been increasing their per pupil expenditures have been receiving more funds even when the overall appropriation has declined and even though the number of their Indian students has not increased.

The change would make procedures of Indian education allocations similar to those of chapter 1 of the Education Consolidation and Improvement Act. However, to prevent substantial shifts of funding from current levels, the bill also contains a "hold harmless" provision stipulating that the per pupil allocation to each LEA shall be no less than the 1987 amount.

The Administration's bill would also amend the "maintenance of effort" requirements in part A. Currently, a school district loses all its Indian education funds for one year if it does not maintain fiscal effort at least at the 90 percent level.

This sanction is much harsher than comparable sanctions in other programs. Under the proposed bill, failure to maintain fiscal

effort would result in a proportionate reduction rather than an elimination of funds.

For the educational personnel training and fellowship programs, the Administration's bill would authorize the Secretary to require recipients to remain in the profession for which training was provided for a reasonable period of time or to repay all or part of the cost of training. This provision would add some degree of accountability for beneficiaries and would be consistent with comparable requirements under other Department programs.

In another change, fellowships would be limited to graduate students. Traditionally, fellowships are meant for graduate level study, and that was probably the original intent of the statute, which authorized fellowships to be used "for study in graduate and professional programs at institutions of higher education." Further, because there are many other sources of support for undergraduate education, there is a greater need for graduate fellowships.

For the adult education program, the Administration's bill would authorize the Secretary to give priority to applicants from previously underserved areas. Studies have shown that certain recipients and areas of the country tend to be repeatedly successful in competing for adult education grants. In particular, applicants in rural, isolated areas, where the need for adult education can be particularly severe, have not participated in this program to the same extent as urban applicants.

Finally, the Administration's bill would add a new authority for research, evaluation, and dissemination of information on Indian education and the effectiveness of programs assisted under the act. From time to time, there is a need for such studies, and the current statute does not provide a comprehensive authorization.

Mr. Chairman, we are very supportive of the committee's desire to reauthorize programs under the Indian Education Act. I hope that we can use this reauthorization process to correct current statutory problems by authorizing all of these programs as part of a single statute, by simplifying certain confusing or duplicative provisions, and by providing for an equitable allocation of funds.

We will be pleased to work with you and your committee to develop a sound and effective bill that will continue to promote the improvement of educational quality for Indian children and adults.

I am honored to have this opportunity to appear before you this morning, and my colleague and I will be happy to answer any questions you might have, Mr. Chairman.

Thank you very much.

CONSOLIDATED INDIAN EDUCATION ACT

Senator EVANS. Thank you very much for your testimony.

I would like to say at the outset I thoroughly agree with you that it would be beneficial for us to ultimately, before final passage of any such bill, bring it all together so that we do have in one place all aspects of Indian education. Then we can look at them and refer to them in one place which has not yet been done but which I believe can be done in the bills that have been introduced.

GIFTED AND TALENTED CENTERS

First, on page 2, you say that the intent of the language referring to the national network of American Indian and Native Hawaiian Gifted and Talented Centers is unclear. Could you be more specific in how it is unclear and what you believe ought to be done to make it more clear?

Ms. DORSETT. Mr. Chairman, I have been in this position and confirmed as Assistant Secretary for 2 months now, and I am not quite clear myself about that. If you do not mind, I will defer to my colleague, Mr. Corwin.

Senator EVANS. Certainly. Would you like to introduce yourself for the record?

Mr. CORWIN. Yes; I am Thomas Corwin, Director, Division of Elementary, Secondary, and Vocational Analysis in the Budget Service in the Department.

Senator EVANS. I might say at the outset, Ms. Dorsett, that we would be happy on any of these questions to have whatever written answers in addition to oral answers. We will keep the record open for a sufficient time to receive those written responses if that would be helpful.

Ms. DORSETT. Thank you very much.

Senator EVANS. Yes, Mr. Corwin?

Mr. CORWIN. The section on gifted and talented directs the Department to provide grants to two community colleges and one Indian organization. That part is clear.

However, then it goes on to direct the Secretary to facilitate the establishment of a national network. That is unusual language for us, the phrase "facilitate the establishment." There are funds authorized for that section, but I am not sure if that means financial support or some encouragement or exactly what. I think we should work to clear that up before final passage.

Senator EVANS. Would you care to—that is subsection (c) on page 42 where it talks about that. Would you care to, in a written response, give us any alternative language that you think would be sufficiently clear to be helpful?

Mr. CORWIN. We would be happy to.

Senator EVANS. Fine, thank you.

[Material to be supplied follows:]

RECOMMENDED LANGUAGE FOR GIFTED AND TALENTED CENTERS PROGRAM

Following the hearing, the Department of Education recommended the following language, which the Committee incorporated in subsection 324(c) of the bill:

"The Secretary shall encourage grantees under this section to work cooperatively as a national network so that the information they develop is readily available to the educational community at large."

INDIAN PREFERENCE

Senator EVANS. On page 2 also, you mention down toward the bottom of the page that under section 114, the Indian preference provision of the Indian Reorganization Act would be applied to our office Indian Education, and you object to the provision.

There is current law that does state Indian preference. Do you believe that that law does not apply to the Department of Education?

Ms. DORSETT. I want to say that I am fully supportive of your comment in terms of that. In terms of the Department of Education, however, the Civil Service regulations that we work under are applicable to all the Federal Government employees, and we are abiding by those, sir. We feel that we have interviewed and have hired those who are most qualified for the position, including Indians.

To say that only an Indian is qualified for a position, I think, would be erroneous. We have had an effective program at the Department of Education, and we do understand that Indians should be hired, and they have been. We have had very qualified Indians, but we feel that under civil rights regulations we respond to all our applicants regardless of their race or religion or creed or sex and we should not disqualify anyone because he or she is not Indian.

Mr. CORWIN. If I could add a little bit to that, the Indian preference requirements that now govern employment in the BIA have been consistently interpreted as not affecting employment in our Department.

Senator EVANS. That may be a narrow reading of the law. It is my understanding that the Indian Health Service which is not codified in the same section of U.S. Code utilizes Indian preference.

Mr. CORWIN. I believe that is correct, but I don't think our—

Senator EVANS. What is the difference? Do you believe just because it is codified under a particular section of the Code that it doesn't apply to everybody?

Mr. CORWIN. I am not an attorney and I would like, for the record, to have our attorney help me with the answer, but I understand that the Indian Health Service does operate under Indian preference. I haven't heard any interpretation of the rules and regulations on it that would bring the Department of Education under Indian preference under current law. There is just simply different law in effect for HHS.

Senator EVANS. And you believe that is appropriate, even though that may be or may not be an accurate interpretation of current law? Assuming that it is, we are in the business of changing law or modifying law, and we are trying to seek what the best answers are. Do you believe that it should not cover the Department of Education when, apparently, the Indian Health Service believes it covers them?

We are only talking now about the office of Indian Education within the Department of Education.

Ms. DORSETT. I do not feel that the Indian preference law should cover the Department of Education.

Senator EVANS. Why not? Do you believe that the Indian preference provisions are a responsible part of current law insofar as they may apply?

Ms. DORSETT. Can you repeat that question?

Senator EVANS. Well, do you believe that the Indian preference provisions in current law are appropriate insofar as they apply? I presume that it is the opinion of the Department of Education that it applies only to the Bureau of Indian Affairs programs or perhaps

to the Indian Health Service programs. Do you believe that those are appropriate provisions of law insofar as they cover those programs?

Ms. DORSETT. All I can say to you—I can only speak for the Department of Education, and we are not bound under the Indian preference law, and I am strongly opposed to that at this time.

Senator EVANS. Mr. Corwin.

Mr. CORWIN. Well, we are not completely familiar with how the other departments operate. They may have programs stemming from the trust responsibility between the tribes and the Federal Government that makes it appropriate to have an Indian preference standard. Our own programs stem from findings about 15 years ago of a commission headed by Senator Kennedy that found particularly severe educational deprivation among Indian children. So, we began these programs after that finding rather than on the basis of the trust responsibility.

So, there may be some kind of legal difference there that would make it appropriate for the other departments to have that preference.

Senator EVANS. How many people are now on staff in the Office of Indian Education within the Department of Education?

Ms. DORSETT. There are 16 Indians now on staff at the Department of Education, and 4 of those 16 work in the Indian education programs.

Mr. CORWIN. There is a total of 45 staff members in our Office of Indian Education.

Ms. DORSETT. There are 45 altogether, but there are 16 Indians working.

Senator EVANS. Wait a minute. How many total employees in the Office of Indian Education?

Ms. DORSETT. There are 45.

Senator EVANS. How many currently are Indian?

Ms. DORSETT. There are 4.

Senator EVANS. There are 4 out of 45.

Ms. DORSETT. Yes.

Senator EVANS. Wouldn't you believe that—you know, we do have in law a whole series of acts that apply to minority preference in terms of various kinds of business activities and procurement. It is not a unique provision. It is scattered through much of our current law, and I am a little surprised, especially if in the Office of Indian Education we have only found 4 Indians capable or involved in dealing with the intricacies of Indian education out of a staff of 45. It seems to me that may indicate it is a pretty good idea to put an Indian preference provision in here.

Ms. DORSETT. I can only add this comment. Back in 1977, there were 32 Indians working in the Indian education program. And I want to say that, as a result of the recruitment by the Department and the hiring of these Indians, they have moved on to other Federal agencies once they have arrived here in Washington, DC.

Some of them are now working for the BIA. Others are working in other departments of the Federal Government as well as the Education Department. Some of them have gone on to receive their doctorate degrees, Ph.D.'s, Ed.D.'s, and some have gone to the private sector.

Senator EVANS. Well, now, I think that is a splendid end result, but I don't think we ought to stop the pipeline just because we have had a splendid end result. That, it seems to me, is a magnificent argument for continuing to keep that pipeline filled if that is what it is producing.

Mr. CORWIN. We haven't stopped the pipeline. We do operate under the general guidelines and rules governing equal employment opportunity, as Ms. Dorsett—

Senator EVANS. I understand that.

Mr. CORWIN. As Ms. Dorsett testified, the Department has a very fine record in recruiting and retaining minorities and women. The rules under which we now operate don't specify particular kinds of minorities or women, so you have all kinds in all our programs.

From that perspective, 4 out of 45 may not be so bad.

AVERAGE DAILY ENROLLMENT VERSUS AVERAGE DAILY ATTENDANCE

Senator EVANS. All right. Let me continue.

On page 4, you talk about the average daily enrollment versus average daily attendance. I am familiar, of course, with the tradition of using average daily attendance, although I might say that average daily attendance is a little bit fuzzy also. Average daily attendance depends on a lot of record keeping by a lot of teachers and a horrendous amount of assembling of information.

Both as Governor and now as Senator, I think I sometimes look at average daily attendance figures with a modicum of suspicion, but you do say that data on average daily enrollment are not readily available through the States. If average daily enrollment were the measure of funding, wouldn't that be just as easily arrived at, perhaps more easily arrived at because it is more stable, than average daily attendance?

Ms. DORSETT. Well, those at the State Departments of Education sir, are the ones who decide on what data they want from the LEAs, and most States do not require the enrollment figures but the daily attendance. Therefore, it is the current practice that we are using the daily attendance and not the daily enrollment.

Senator EVANS. It is my understanding that the desirability of the proposal for change comes from the fact that in many of those schools which are primarily attended or which have a large attendance of Indian students are in areas where there is more than usual difficulty in transportation and weather and isolation and that average daily attendance figures may end up providing simply less than adequate funds.

Mr. CORWIN. That wasn't the rationale for our proposal. We proposed this because we haven't been able to obtain satisfactory verifiable average daily enrollment data from the States and have had to use average daily attendance no matter what the law says.

This change in the law would not have an impact, because we are already using the average daily attendance data.

Senator EVANS. So, even though the statute says average daily enrollment, you are not using it.

Mr. CORWIN. That is right. One opportunity that a reauthorization process gives you is the opportunity to clean up the statute and make it consistent with what you are actually doing.

Senator EVANS. It also is an opportunity for oversight to suggest that the opposite may be an appropriate answer also, that if the current law says do something, it is time to do it instead of just ignoring it.

Ms. DORSETT. If I could just add this comment. Children can be enrolled in two different locations at the same time without being discharged from one facility, and when you talk about average daily attendance, a child only would be in one place or the other. This has been a problem that we have looked into.

Senator EVANS. I would judge that that is a pretty rare or unique circumstance. It is probably just as rare as somebody being marked present when they are really absent or present for only a short time during the day. They are both susceptible to difficulties. Both are susceptible to abuse.

I guess the fundamental question is one really of trying to recognize whether in fact there is a problem, a unique problem, for these students and that unique problem being the question of more than average difficulty in terms of transportation and roads and isolation and, as a result, attendance. If the end result, then, in using average daily attendance versus average daily enrollment is a lower than adequate amount of money that goes to those schools, it just may be we are either inadvertently or deliberately short-changing those schools and their ability to carry on their functions.

In that case, one of two things needs to be done. Either change to average daily enrollment or perhaps if average daily attendance is the only measure and if in fact it is true that there are unique difficulties in getting to school that are not shared by most other students that some surcharge on average daily attendance ought to be implemented in order to assure that there is no shortage of funds.

If you have any ideas on any alternatives—I think it would be useful, assuming now that you are not using the current statute, to find out if you have any analysis as to what effect that has on the amounts of money that are being distributed to those schools. Do you have any way of telling even on a test basis to try to measure average daily enrollment against average daily attendance in retrospect?

Mr. CORWIN. It is possible we could go back and get some data from selected districts. Not before your markup on Friday but—

Senator EVANS. No; but the markup will not be the last train out of the station. There will be some period of time between the markup and the final passage of the legislation.

If that is possible to do, it might be helpful just so we all know, first, whether this is a problem. And if it is in terms of the adequacy of funds flowing to those districts, how much of a problem. If that proves to be true, then we can do something about correcting it in some fashion or another.

Mr. CORWIN. We can go back to the well on this one more time. I sense that if we found that it was costing the districts whose students miss a substantial part of the year some money and we came up with a better method of collecting the average daily enrollment data, then the other districts whose students get there and which have to educate the kids nine months of the year are going to complain to us that they are being short-changed. However, we can come up with some options for you.

Senator EVANS. All right. Thank you.
[Material to be supplied follows:]

EFFECT OF USING AVERAGE DAILY ATTENDANCE

Following the hearing, the Committee amended its bill to require that average daily attendance rather than average daily enrollment be used in computing a State's average per pupil expenditure.

Average daily enrollment is a term that is not familiar to most school statisticians. Enrollment is a count of students registered in a school district. It is usually taken in the fall. The enrollment count might be taken again late in the year, but it is not averaged on a daily basis. As a result, it is not really possible to compute State per pupil expenditure data in strict conformance with current statutory requirements.

A much more prevalent and commonly accepted statistical measure is average daily membership, or ADM. School membership usually takes into account the number of students who leave the district during the year, and many school districts and States average these data on a daily basis. However, the procedures for computing ADM vary widely among States, and six States do not compute ADM at all.

Average daily attendance, or ADA, which represents the number of students actually attending classes, seems to be the most consistently accurate information to use in computing Part A grants.

It is true that there is considerable controversy among school districts and States over the use of either ADA or ADM data, especially when the data are used to generate funds. Depending on the State, ADA runs anywhere from 90 to 98 percent of ADM and, under some programs, use of ADA could result in reduced funding for States with particularly low attendance rates.

Under the Indian Education Act, however, ADA is used, not in determining the number of children counted to generate funds, but in determining a State's average per pupil expenditure. A school district's Part A grant is then determined by multiplying the number of Indian children in the district by the State's average per pupil expenditure. Since a low attendance rate would have the effect of boosting a State's average per pupil expenditure level slightly, it would therefore produce slightly higher payments under the Indian Education Act.

CONSTRAINING THE PER PUPIL EXPENDITURE FACTOR

Senator EVANS. Again on page 4, you have a change in formula which could constrain the average per pupil expenditure factor used in computing payments to school districts to no more than 120 percent but no less than 80 percent of the national average.

Does that have an undue effect on what might be small and isolated school districts or districts in terms of their cost of education? I don't know whether it does nationally, but I do know from my own experience in Washington State with 300 school districts, some with 50,000 to 60,000 students and others with as few as 30, that the differential in fundamental cost is far more than the difference between 80 and 120 percent of the average.

I am not worried so much about the 80 percent, but some small isolated districts may have costs that are just fundamental and basic costs that are far higher than 120 percent of the national average.

Mr. CORWIN. The formula for calculating the entitlement under the program is the district's average daily enrollment times the State's average per pupil expenditure. So, if the district has a particularly high expenditure, that really isn't taken into account.

What we have found in the program in the last 5 or 6 years is that the appropriation has been fairly stable—between about \$47 million and \$50 million. While the appropriation has been stable, some of the States that have been raising their expenditures great-

ly have been pulling in more and more of the money. So, there is a fixed pot of money, but it is shifting and causing problems in some of the other States whose expenditures have been rising, say, more at the rate of inflation. They have been losing.

It looked to us to be more equitable to cap the average per pupil expenditure that the State could count at 120 percent as it is done in some of our other programs. This won't cost anybody anything immediately, because we have also proposed what we call a "hold-harmless." Nobody would lose anything.

Over time, more funds would go to most of the States rather than a few States that have particularly high average per pupil expenditures.

Senator EVANS. But these are payments not to States but to school districts within States.

Mr. CORWIN. Right, but the school district payment is calculated on the basis of the State's average per pupil expenditure.

Senator EVANS. I understand.

Do you know at this point what the end effect of that would be to certain districts and States that have high Indian populations?

Mr. CORWIN. We can calculate that for you. It depends on what appropriation we are assuming for the Part A program. The Administration proposed level funding this year, so there wouldn't have been much of an impact or any impact.

Senator EVANS. Well, there wouldn't have been much of an impact if—No, but if you put a cap of 120 percent, presumably some of them are above 120 percent.

Mr. CORWIN. That is right, but we had the hold harmless in there stating that no district—

Senator EVANS. I understand, but—

Mr. CORWIN. You have to begin to increase the appropriation, say, by 10 percent or 20 percent. Then, those districts would increase what they would get. The districts in those States would increase their appropriation less than they would without the cap. They would still gain but not as much.

Senator EVANS. Would you care to, maybe for the record, examine this whole provision and assume, for the moment, that there was not a hold harmless provision but that you apply just because that will be applied sometime in the future.

Mr. CORWIN. We could provide a table.

Senator EVANS. And give us a run-down on those districts that would lose and how much, assuming, say, a 10 percent increase in funding and those districts that would gain and how much.

Mr. CORWIN. We would be happy to.

Senator EVANS. Fine. Thank you.

[Material to be supplied follows:]

PROPOSED PART A FORMULA CHANGE

Under Part A of the Indian Education Act, an eligible school district receives a payment for each Indian child it enrolls in its schools. The amount of that payment is derived by a formula that multiplies the number of Indian children in the school district times the average per pupil expenditure in the district's State. The resulting figure is reduced according to available appropriations. The amount of the Part A payment per Indian student varies from State to State, but within a State, each school district is paid at the same rate.

The Department's proposal would constrain the State per pupil expenditure factor to no less than 80 percent nor more than 120 percent of the national average. To prevent precipitous shifts or losses of funding, the most recent Part A per-student payment rate for a State would serve as a "hold harmless" level for that State. Since two of the factors in the formula—the number of Indian students in each district and the State average per pupil expenditure—change every year, it is not possible to predict accurately the effect the proposal would have in future years.

The following table, therefore, shows what effect the proposal would have had if it had been applied to the 1987 grants and if the 1987 appropriation had been increased by 10 percent over 1986. For the purposes of this table, 1986 is used as the hold harmless year. Data on numbers of Indian students and State per pupil expenditures used to generate the figures in the table are actual.

PAYMENTS PER INDIAN STUDENT—PART A, INDIAN EDUCATION ACT

State	Hold harmless year	First year under proposed new formula	Percentage increase
Total appropriation	\$43,675,000	\$48,070,000	10
Alabama	83 39	117 14	40
Alaska	350 09	350.09	0
Arizona	111 64	122.17	9
Arkansas	90 70	117.14	29
California	120.24	137 64	14
Colorado	136 88	156.28	14
Connecticut	163 25	175.73	8
Florida	118 98	137 01	15
Hawaii	135 30	146 48	8
Idaho	88 51	117.14	32
Illinois	133 84	149 56	12
Indiana	110 58	128 98	17
Iowa	132 86	146 56	10
Kansas	133 27	150 49	13
Louisiana	108 35	126 40	17
Maine	109.57	127 84	17
Maryland	156 56	173 40	11
Massachusetts	145 89	170 19	17
Michigan	146 29	162.67	11
Minnesota	137 77	155 31	13
Mississippi	84 41	117 14	39
Missouri	111 50	125 06	12
Montana	146 25	162 62	11
Nebraska	130 71	146.73	12
Nevada	109 16	119 59	10
New Jersey	181 92	181 92	0
New Mexico	118 82	133 29	12
New York	207 65	207 65	0
North Carolina	93 46	117 14	25
North Dakota	122 88	141 15	15
Ohio	121 01	138 87	15
Oklahoma	116 87	120 48	3
Oregon	149 22	164 40	10
Rhode Island	159 31	175 73	10
South Dakota	108 96	122 25	12
Texas	112 98	132 31	17
Utah	83 31	117 14	41
Vermont	127 71	154 34	21
Virginia	116 79	133 37	14
Washington	140 61	157 38	12
Wisconsin	142 56	161 27	13
Wyoming	183 55	183 55	0

PROPOSED AMENDMENT TO FELLOWSHIP AND TRAINING PROGRAM

Senator EVANS. On page 5 in your testimony, you talk about the personnel training and fellowship programs that would authorize the Secretary to require recipients to remain in the profession for which training was provided for a reasonable period of time or to repay all or part of the cost of training.

With the idea of adding some degree of accountability for beneficiaries, that is fairly common in some other programs. Can you describe more accurately what you mean by a reasonable period of time or part of the cost of training? That is pretty fuzzy.

Ms. DORSETT. I just want to state that we were hoping that the person who received the fellowship would stay in the profession at least for one year for each year that we paid for their fellowship costs.

Senator EVANS. For 1 year or—

Ms. DORSETT. In other words, for each one of the years that they receive the fellowship that they stay in that profession 1 year, a year for a year.

Senator EVANS. So, that would be the definition of a reasonable period of time.

Ms. DORSETT. That is exactly correct.

Mr. CORWIN. That is how we have implemented it in the bilingual education training program, and we are just starting to implement it in vocational rehabilitation training.

Senator EVANS. So, that is what you have in mind. Then you say or to repay all or part of the cost of training. Do you have any more specifics on what part would be adequate in your proposal?

Mr. CORWIN. I believe it would be proportionate. If you had had four years of support for a doctoral program and you had stayed in the field three, then you would pay back 25 percent.

These are the kind of things you don't always want to fix in law but put them into regs and let the public comment on them.

Senator EVANS. But if we are going to write the law that says reasonable period of time or part of the cost of training, then we better, at least with the report that goes along with the law, it seems to me we ought to try to define that so that there is some guidance. If that is what is done in other fields, I think that might be helpful to have that along with it.

Mr. CORWIN. Sure.

VIEW OF INDIAN EDUCATION

Senator EVANS. Can you just perhaps in more general terms—and maybe this would require written response—what is your general view currently of Indian education as it is seen from the Department of Education? What are the biggest problems ahead, the biggest deficiencies, the biggest difficulties? In other words, what are our peculiar challenges in the division of Indian education as you see them in the next few years?

Ms. DORSETT. If you don't mind, Mr. Chairman, I would like to submit that in writing to you so that I can give you a very comprehensive response.

Senator EVANS. Surely, but it would be helpful—it is my understanding, for instance, that there is a severe shortage of math

and science teachers which is probably not unusual. That seems to be almost endemic right now, not just in Indian education but throughout our society. But it would be helpful if you could set forth for us some of what you see as the major challenges and problems we have ahead with as much specificity as you can come back with.

Ms. DORSETT. I will. Thank you.

[Material to be supplied follows:]

STATUS OF INDIAN EDUCATION

Over the last 14 years, more than \$850 million has been made available under the Indian Education Act to an average of 1,000 school districts and 120 Indian organizations and tribes each year. This support has supplemented other Federal programs assisting Indian education, including Chapter 1, Bilingual Education, Impact Aid, and the programs of the Bureau of Indian Affairs. Federal money, in combination with the much larger sums provided by the State and local governments, has had a positive effect on the educational progress of Indians.

Between 1970 and 1980 the percentage of Indian adults 25 and over who are high school graduates increased from 33 percent to 56 percent. This compares to 1980 rates of 70 percent for whites, 51 percent for blacks, and 44 percent for Hispanics. During this same period, the median years of school completed for the Indian population aged 25 and older increased from 9.8 years to 12.2 years.

In spite of this progress, Indians, as a group, still lag behind the national average in such areas as years of school completed, high school retention rates, median family income, per capita income, and percentage of families above the poverty level.

For example, young Indians continue to have higher high school dropout rates than other groups. In 1980, for children age 16 and 17, the Indian school enrollment rate was only 77 percent, compared to 89 percent for whites, 88 percent for blacks, and 80 percent for Hispanics.

The challenges we face today in Indian education include reducing the school dropout rate, eliminating drug and alcohol use among school-age children, and providing preschool education for those unable to obtain it. The Congress has provided millions of dollars to support and enhance Indian education, but this is only half of the solution. There is a strong reform movement going on at State and local levels. This movement is based on equity, accountability, and higher academic standards. A particular challenge for all educators is to ensure that the Indian population is not left behind by this reform movement.

The Department of Education's Indian education program, as opposed to the BIA's program, is offered as a supplement, not an alternative, to the regular education program received by Indian children in public and tribal schools. Where such problems as shortages of math and science teachers exist, they are not necessarily associated with the presence of Indian children. Educational services provided through the Indian Education Act generally concentrate on assisting with those problems that are associated with or tend to have a greater proportional impact on the Indian population.

Senator EVANS. With that, we do thank you very much, and I understand fully that being on the job for a very short period of time makes it a little difficult to respond directly to some of the questions. We would appreciate whatever other comments you would like in writing along with the specific questions we have asked.

Ms. DORSETT. Thank you very much.

Senator EVANS. Thank you very much.

Next is the Honorable Ross Swimmer, Assistant Secretary for Indian Affairs, U.S. Department of the Interior.

Mr. Swimmer, please go ahead.

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. SWIMMER. Thank you, Mr. Chairman. I appreciate the opportunity of being able to appear here today.

I do have a statement that I would like to submit for the record along with some attachments that get into specific provisions of the proposed legislation.

Senator EVANS. The entire statement will be included in the record along with the attachments.

Mr. SWIMMER. Thank you.

I would like to highlight the statement, if I can, and then go through a couple of reports which indicate some of the problems that I am particularly concerned with.

I might add that in listening to the opening statements and also hearing some comments from Indian country and the result of the hearings held recently, it appears to me that perhaps the amendments that this legislation would propose to Public Law 95-561, the Indian Education Act of 1978, are perhaps flawed in that the premise for this legislation apparently is based on a proposal or an alleged proposal that I had last year of transferring schools operated by the Bureau of Indian Affairs to the public school system of the local States.

In fact, just to clear that matter up for the record, in December 1986, I made a presentation to the press and an announcement to Indian country that I believed we needed to move in a new direction and one that was comprehensive. I said that we must attack several problems that are out there on the reservation, and we must do it together, working on all of the problems together and not simply focusing our efforts on one or the other.

A few of those problems were in the area of job creation, developing an employable work force, working on the problem of alcoholism, and addressing the issue of education. While each one of these was a valid goal, without addressing them all together, it would be very difficult to change the environment or to improve on the way of life that is currently experienced on too many of our reservations.

In the education area, I suggested the tribes should seriously look at contracting the school systems that the BIA currently operates on their reservations. I did so because I do believe that, in some respects at least, there is almost an impossibility of performance when one is attempting to operate a large, multi-faceted, multi-State education program from Washington, DC and that certainly locally operated education with oversight, whether it is at the State or the Federal level, could do a more effective job. In fact, approximately 60 or 70 out of the 180 schools we operate, are now contracted by tribes.

I also suggested that in those cases where tribes did not feel that they had the capacity to do that, that we should look at an alternative system, perhaps the State or local public school system, perhaps the Zuni example, or even private schools in contracting for the education process, but, more importantly, to find a system where we can hold it accountable and that would work on the reservation.

I did not suggest this as a unilateral action of the Bureau of Indian Affairs. I was fully aware of Public Law 95-561 and Public Law 93-638.

Those laws together provide Indian concurrence, tribal concurrence in what we would do. I recognize that I could not simply

shift, without an act of Congress anyway, the operation of our school system to another entity but that the mechanism of Public Law 93-638 was available to us.

What I did in December was not lay out a comprehensive plan of action. Perhaps that frightened some people. What I asked for in December was, in fact, dialog.

As we go through the testimony this morning and I go into some of the exhibits, I would like to express to the committee how that dialog occurred and that in fact it did occur in a consultative process and is still occurring today.

It is my opinion that there is not a need to amend Public Law 95-561 in the way that this proposed bill does. In the Senate bill and in the House bill, H.R. 5, we find some very difficult measures that are attempting to be enacted into law by the Congress, and we think that we have such a problem with this bill that we certainly would recommend that it not be passed into law and that these amendments not be accepted.

A few of these include amendments which legislatively would recognize each BIA funded school and essentially strip the executive branch of all discretionary authority for the operation of these schools.

The amendments would freeze certain existing regulations, require a tribal consultation process that does not allow for appropriate administrative planning without outside interference, prohibit the transfer of management of BIA operated schools to entities other than those determined by the tribes—I might add, as I said, that this is already in law—provide a new grant mechanism for funding the new contracted schools, establish a formula for determining the amount of administrative costs to be provided for schools that are funded but not operated by the BIA, and effectively micro-manage the program with provisions to expand certain school programs, automatically trigger post-differential pay authority for certain teachers, waive certain dormitory standards at certain schools, and require the implementation of BIA responsibility under tribal cooperative agreements regardless of BIA concurrence.

As to the grant proposal, title II of this bill, it would provide an alternative system for tribes to assume the operation of BIA funded schools, alternative to the current contracting law, Public Law 93-638.

The intent is apparently to achieve less BIA interference in the operation of what are now called contract schools. We agree with this goal but with modifications to the bill language to meet some concerns about the appropriate role of the BIA and the performance criteria to be used. In fact, we would like to see such a change for all BIA contracted programs. We recommend that Congress consider a major overhaul of Public Law 93-638 and not just limit it to the education programs.

Further, under the grant provision, the role of the Secretary is simply to receive and approve applications and to receive but not act on the required reports. The Secretary has authority to issue regulations relating to the discharge of duties assigned to the Secretary under this title, but in all other matters, the Secretary may not issue regulations.

However, the bill states that the Federal responsibility to provide the program does not change, and the Secretary is required to accept retrocession within 120 days of a tribe's request. In other words, tribes give all the direction, but the Secretary continues to be accountable.

We believe that if the major role of the Bureau of Indian Affairs is only to accept applications and reports from the tribes and then funnel money to them, the Secretary cannot be expected to be accountable for the results. In effect, the grant recipients and the tribes involved would be carrying out the Federal responsibility without any substantive responsibility on the executive branch.

This approach is unacceptable, since Congressional oversight alone cannot be an adequate substitute for executive branch responsibility and authority to assure that there is accountability both for Federal funds and for the quality of service being provided.

The grant proposal is a flawed step in the direction of flexibility. There must be a credible evaluation procedure and the reports must not only be submitted to BIA personnel but should be reviewed and changes made where necessary for the integrity of the programs.

We like the idea of the BIA playing more of an oversight role with our primary concern focusing on the results of the service offered rather than on the day-to-day operations and how the money was spent which, unfortunately, we have too much of in the current contracting procedures. However, we cannot agree to the very limited role outlined in these bills. We must address the ultimate question of responsibility. Does it belong to the tribes or to the Bureau of Indian Affairs?

Further, dealing with the indirect cost issue which is quite controversial, we agree that major changes are needed in this area. I can show by example just some of the inequities that we currently have in the indirect cost system, but I think neither H.R. 5 amendments nor the S. 1645 proposal addresses this in the manner in which it should.

Further study must be made on this issue and some objectivity must be brought into the picture.

Mr. Chairman, approximately a year ago, I suggested a plan of action that I believe would move us in the direction of a high quality education program for the 11 percent of Indian children now educated through the Bureau of Indian Affairs. That suggestion was to involve tribes in the operation of schools on their reservations and hold them accountable for the results.

In lieu of tribes' accepting such responsibility, I suggested that local public school districts could provide for these Indian children as they already do for 82 percent of the Indian children in their districts and which, by law, they have an obligation to provide. The suggestion was premised on the Federal Government providing full funding to the tribes or public school districts assuming such responsibility and the tribes' full agreement, regardless of which direction we go.

This proposal was not offered as a solution to all the problems of poor education on the reservation. I believe, however, that it pointed us in the right direction.

We need on the reservations educational systems that can be held accountable, no fragmented, autonomous systems in which children can often be lost or fall through the cracks. The proposed legislation puts Indian tribes in control of the education, but no effective system of accountability has been offered. No public school system in the United States attempts to locate all accountability for the schools at the community level.

Whatever the intent of the proposed legislation, the effect is to remove virtually any effective accountability. What we do—the Bureau of Indian Affairs and Congress alike—is, of course, justified in terms of what is good for Indian people, but we should not hide from the facts of what is being proposed. The proposed legislation sets up the BIA and the Indian education systems for even more failures. More importantly, it sets up Indian people and their tribal governments for failure.

The real issue of providing quality education for Indian children for whom the Bureau has responsibility is often confused by concerns for sovereignty, tribal corporate rights, funding issues, employment, and local control.

There are some BIA schools that are doing an outstanding job of educating our young people, as evidenced by all objective criteria. In many instances, the record of the public schools for Indian students is very good.

We know the educational conditions which lead to success. We need to stop responding to the sporadic and confused criticism of those who, on the one hand, see nothing but failure or who, on the other, resist any change and to get on with the task of creating the conditions which will lead to educational success for Indian students.

I believe that Indian people want an accountable system of education for their children. I believe there are tribes that can improve the educational opportunities of their children by assuming more administrative responsibility for their schools. Even though some tribes may initially resist assuming the responsibility of managing their education programs, I am convinced that this is the result of historical conditions which can be overcome and that the first response to my proposal is not necessarily the final word.

I also believe—I know—that if this assumption of new responsibility is to be effective, it will have to be a well thought out process involving the cooperation of the Bureau of Indian Affairs and the local school systems. To divest the Bureau of established oversight responsibilities in an invitation to disaster with our Indian children being the victims.

I also believe that some schools should be contracted to the local government that now provides education for 82 percent of the Indian children. I believe that where it is possible, cooperative agreements between tribes and State systems would concentrate our efforts at improving one system. Whatever is done should be done to improve the education of our Indian children and not in pursuit of side issues.

To highlight a couple of things in the testimony and in the bill that definitely do need attention, let me just point out—and I will be happy to furnish this information to the committee—in the example of indirect cost disparity, a school of fewer than 50 children

with a total budget of a little over \$100,000 shows an indirect cost at 66 percent while a similarly sized school with a budget of just over \$100 shows an indirect cost rate of 18 percent.

Another school, again a school of over 50 children, a budget of over \$350,000 compared with a school similarly sized with a budget of approximately \$250,000, the difference of indirect cost rates are 46 percent and 8 percent.

I could go on with examples and we know they are there, but the point of it is that yes, it is appropriate to address the issue of indirect cost. We are not sure how best to do this. We have been wrestling with a formula ourselves. We have been looking at alternatives. We have talked to the committee and to staff, and we hope and we believe that we can come up with a fair formula and one that does permit tribes, tribal contractors or State contractors, if that be the case, to have adequate administrative overhead to run the program but not profit from the administrative overhead.

Questions are usually brought up about consultation and, as I mentioned, even in the proposed bill that is before us today, there is a provision that would legislatively dictate a consultation plan. While I accept that we do not have a single formula for consultation, I do not accept the premise that we don't consult.

At my confirmation hearings, I made this an issue, and I said that I will consult with Indian tribes and Indian leaders. I think I have done that.

The question in December 1985 was, who puts forth the idea? Does the Bureau of Indian Affairs not have the right and the responsibility to suggest changes to the existing systems that we operate and then commence a dialog with Indian tribes on those issues?

I believe we do and, as I said, I suggested about four different areas that needed very real attention. We then went out and began a consultation process with some of the very people that were cited at the recent hearing.

Just on the proposed contracting of schools to tribes from the Bureau of Indian Affairs, we held 53 meetings in States with a high Indian population attending Bureau of Indian Affairs schools. At those meetings, we had 83 tribes represented. In all, 392 people were documented; over 400 we know appeared and provided some input into the process.

The purpose was, again, not a hearing and not consultation on a specific plan. It was on an idea, and we were trying to draw from the Indian community how they saw this idea and how it could materialize perhaps into something that would provide a more effective education program.

Admittedly, what we received was a lot of negative reaction. Well, we don't want you to contract out the schools. We want you to go ahead and run them.

I suggest that really wasn't a viable alternative given the record that we have in the Bureau of Indian Affairs that across the board we operate some good systems. Unfortunately, we operate some that are not so good. Compared to the public school systems, we are about on a par.

The bill would also freeze many of our regulations some dating back to the 1950's. Public Law 95-561, while it was passed in 1978

and one could say my goodness, 7 or 8 years is plenty of time to get your act together, Bureau of Indian Affairs, and you should be out there administering this law, the fact is that we haven't. And we have 11 sets of regulations presently that are in the process of getting out that are going to have a lot to do with the implementation of Public Law 95-561.

Now, we are being told that we are not sure that we like what the Bureau of Indian Affairs is proposing in these regulations. I contend that nobody would agree with what might be proposed by any agency at any one-time, but that is why you have proposed regulations, and that is why we take comment on them and try to adjust the regulations to fit the reality of the situation and to comply with the law.

However, to freeze our hands now and say no more regulations, we will stay with what we have, we don't really trust you to enact regulations, we are afraid that you might take liberty with this or that, I think is a mistake, and it doesn't allow us fully to implement a good law, Public Law 95-561, and to proceed in the way that Congress intended us to several years ago.

We recently put out regulations on the higher education program. Admittedly, there were a number of concerns about these regulations. But just to summarize, in taking comments as a result of these proposed regulations, we received over 850 comments involving approximately 18 major sections of the bill. Out of 18 sections of the bill, we either deleted or changed 12 of those in deference to the comments we received.

I think that our performance is satisfactory in dealing with the proposed regulations. We have others we know are controversial, all the way from new school starts to other academic standards. But it is not fair for us to sit back and say well, we are not going to introduce or pass on those regulations; we will stay with what we have.

My recommendation is that we not go forward with S. 1645 as an Indian amendment to the education bill and that we work within Public Law 95-561 and Public Law 93-638 and that we work particularly on Public Law 93-638 to provide a mechanism similar to the grant suggestion that is proposed here to make it easier for tribes to contract, to cut the red tape, and to make sure that we provide adequate funding where the tribes are assuming the responsibility currently held by the Bureau of Indian Affairs.

With that, I conclude my testimony and would be happy to answer questions the committee might have.

[Prepared statement of Mr. Swimmer appears in the appendix.]

Senator EVANS. Thank you, Mr. Swimmer.

I guess I will have to start right at the beginning. You mentioned your speech in December. Was it December 1986 or 1985?

Mr. SWIMMER. December 1986.

Senator EVANS. I thought you used both dates during your testimony. However, in your speech in December 1986, prior to that speech, was there any dialog with Indian leaders or tribes in getting to that point or was it your idea that you would put forward the speech and then the dialogue would flow from those ideas?

Mr. SWIMMER. I made several visits to Indian country shortly after that, In June 1985, I spent two weeks on the road and visited

approximately 25 reservations and talked to over 100 tribal leaders. I asked what some of the problems were, and everywhere I went, education was number one. It certainly was in the top of the priorities that were listed.

I also visited, with the public school system people, and I also was contacted by BIA personnel who had been in the Bureau of Indian Affairs schools.

I received information from them that indicated to me that the Bureau operated schools were having a problem, and a lot of it was because of the bureaucracy. It is not because anybody is trying to avoid educating Indian children, but the sheer bureaucracy of what it is necessary to go through to make simple changes to effect a positive change out there is extremely difficult and I sensed this sense of frustration.

I also saw tribes like Zuni that had worked with local public school districts to negotiate a boundary change that would permit the public school boundary to be contiguous to the reservation, ensuring those basic things that the tribe wanted such as Indian representation on the school board, Indian hiring, and policies that, in large part, are developed by the tribe.

But I saw a lot of different alternatives out there to what we were doing, and I visited a lot of contract schools, not the least of which was Santa Fe Indian School, and I visited that twice. I looked at it as quite a model program for the way a contract school could be operated.

I came to Washington following that and a subsequent visit in the fall with the idea that if we were going to do something to make change in Indian country, we needed to start soon and that one of the major changes that would seem to begin us on a path toward improvement—nothing that I was proposing was going to turn over the schools automatically in terms of quality, but what I was suggesting would start us on a path toward a development of a different kind of system and putting tribes more in control of what was going on in Indian education.

Senator EVANS. I understand all of that good work at the beginning of coming into your current responsibilities. That was in general terms, but I take it from that that the ideas expressed in the speech were essentially your own ideas or yours and those of your associates in the Bureau.

Mr. SWIMMER. Well, the ideas that I put forth were my ideas based on my observations, and I asked the tribes to get involved and, at that point, began the dialog to see how that might happen.

Senator EVANS. It doesn't sound to me like there was dialogue, however, in developing the concepts out of the speech, that you took what you had heard and developed the speech. Then, once the speech was given, you figured that was the time to have the specific dialog on the elements that you had put forward in the speech.

Mr. SWIMMER. Well, I am not sure I can—

Senator EVANS. Well, Mr. Swimmer, I think that I just see all through here a feeling that you really don't understand what consultation is all about. Later on in your testimony, you said you had to decide whether schools belong to the tribe or belong to the BIA. I don't think they belong to either one; they belong to the Indian people, and there has to be an understanding of that.

When you say on the front page of your testimony that the amendments "freeze existing regulations, require a tribal consultation process that does not allow for appropriate administrative planning without outside interference," I can only take it that when you talk about "outside interference," you are talking about tribal leadership. Who else could you be talking about when you talk about outside interference with administrative planning?

Mr. SWIMMER. I am not suggesting at all that tribal leadership is outside interference. What I am saying in that statement is that for us to develop a regulatory process, we have a system that we have to go through at the Bureau level. It does require consultation, and we have consulted in that regard, and we cannot be passive in that respect.

We also have to propose the regulations before they can ever get out, but we do seek consultation, we do seek tribal input during that whole process. But if we are estopped from doing it by the Congress, we cannot then go forward with these regulations. In fact, the bill may keep us from proposing regulations on the very bill.

Senator EVANS. I still don't understand what you meant by the term "does not allow for appropriate administrative planning without outside interference." What does that term mean?

Mr. SWIMMER. It means that we cannot plan the process for administrative action in our schools, and we cannot plan the process for regulations without coming back to Congress and having new laws passed. Each regulation would have to be passed by law.

Senator EVANS. So, the outside interference is Congress, not the tribes?

Mr. SWIMMER. Well, I think it could be considered that in our testimony. That is what we are getting at. We would be stopped by law if this passes from doing the very things that we would have to do or that we should be doing, in our opinion, to oversee the educational programs.

Senator EVANS. You know, I have had some small experience over a number of years in some of the very touchy and difficult aspects of relationships between Indian tribes and State government, between Indian tribes and the Pacific Northwest Power Planning Council with some very specific relationships on fish and wildlife management and planning, and they were typified over the years with a rocky beginning and some difficulty in understanding what consultation really meant.

Frankly, I have come to the point—and I don't believe the Bureau of Indian Affairs has come to the same point—that true consultation means sitting down together with a blank sheet of paper and starting from the beginning in cooperation one with another and developing the ideas and the concepts and the directions that are taken and not developing them independently or separately and then putting them out for consultation which immediately puts you in a position where there is understandable tension and difficulty. It is a sort of not invented here syndrome.

Mr. SWIMMER. Certainly.

Senator EVANS. And it doesn't work in very many human endeavors, and I think that it certainly will not work in the particu-

lar and unusual relationship we have, government to government relationship, between Indian tribes and the Federal Government.

I would hope that—frankly although I am a co-sponsor of this bill, I don't like it very well. I wish we had a way to do something better, but the bill evolved out of a pretty broad feeling that we are not going down that path and the end result is growing tension between the Bureau and tribal leadership, which I am sure you can detect. Somehow, I think that comes more from a lack of consultation starting with a blank sheet of paper than from almost anything else.

Now, how can we get back on track?

Mr. SWIMMER. I understand that, and I share the feeling. At the time, I thought that I had talked with enough tribes to know that this would at least be a step in the right direction.

I think you are right in terms of how to begin the process of working together and starting with a blank sheet of paper. We have identified the problem, and that is quality of education or any education being provided to Indian children.

My intent was to reach some conclusion by starting that dialogue. Perhaps it was a flawed start. I would be the first to admit it. From the result of that, I think we have had certainly increased dialogue about education. If it did anything, perhaps it created some awareness that we really do have some serious problems out there, that things aren't going very well in Indian education, and that we are not going to solve many of the other problems on the reservation until we solve this one.

I think that even though it was a rocky start and it has been difficult, and, certainly, I have shared in the pain of that, I believe that we can move down the path together if we are given that opportunity, but I don't think this legislation necessarily gives us that opportunity.

I am more than willing to sit down and meet with tribes, and we have been doing that in the last nine months on a tribe by tribe basis and talking to them about the proposals and about ways of developing an effective education program. I think that the current laws that are on the books, Public Law 95-561 and Public Law 93-638, gives us the tools necessary to continue that dialogue.

I can't back up and withdraw the proposal. I still believe contracting is right. I still believe in the intent of self-determination that the Congress passed. I still believe that tribes should be accountable as governments if they are going to have an education program on their reservation.

Senator EVANS. It seems to me, however, that what we are dealing with in Indian education is every bit as complex and as different and as susceptible to unique solutions as our entire school system in the country which has its good and its bad. Each State has its good school systems and its troublesome ones.

Good education, whether it is Indian education or just general common school education, is not likely to come from any one set of policies but policies which are crafted to meet the unique circumstances to the degree we can of each area, and I think that is one of the places we probably get into some difficulties trying to apply national philosophies or standards to very, very different circumstances.

The one thing I am concerned about when you say that Public Law 95-561 and Public Law 93-638 are—regulations are still flowing and they are still being implemented, those laws, the youngest is 10 years old and the oldest is 16 years old. A whole generation of students has passed through school from first grade through high school, to the degree they get through high school, during that period of time. If we are still in the process of implementing that law, it seems to me something is wrong.

Now, you can certainly see from experience modifications that are necessary, but I thought I heard you say that these are regulations designed to implement the law which was passed 10 years ago. Is that accurate?

Mr. SWIMMER. That is correct, and—

Senator EVANS. Where have we been for the last 10 years?

Mr. SWIMMER. Well, I suppose we could have a dialogue on regulation development. It is very complex and it is very slow, and it is not something that any one agency has total control over.

These regulations—I personally made a commitment to try to move the regulations along. We have done that. In fact, we had one set of regulations that were ready to go to final proposed print, and the solicitors advised us that they had not, even though it had been in actual public domain four years, they had not properly been sent out for prior consultation. I pulled those regulations and recirculated them to all the tribes and took new comments, and it has delayed that process approximately a year.

It is one of the most frustrating things as an agency manager I have found to deal with, and that is regulation development. I will say that I don't believe there has been any intent at all, at least certainly not in the time I have been there for a year and three-quarters, to delay implementation. In fact, if anything, we have tried to move it along and get there.

However, it is just a very slow process, and a lot of it is because of the consultation that we talk about. It is a requirement, and we follow that, to take comments, look at those comments, send out our recommendations again and receive new comments, and it is back and forth. But, obviously, while that law has been in effect, we have been attempting to comply with the law. The regulations, however, would settle a number of unsettled areas that we think would still benefit Indian education under 95-561.

Senator EVANS. I would suggest that we probably would—I understand how tedious the regulatory process is, far too tedious. The best thing we could do in the Federal Government would be to burn about three-quarters of the regulations we have and start over again, but we find it difficult to do that.

I do think that at least in the future, when it is required to develop regulations, I would certainly believe as an administrator that the fastest way to do that is to start with a blank sheet of paper and the people who will be affected by the regulations and the administrator and collectively try to get to at least that first round. I think we will end up closer to the mark and reduce the time ultimately and the amount of commentary, particularly adverse commentary, that we otherwise sometimes get.

Let me turn, if I can, to the whole question for assumption of the tribes of the BIA funded schools to achieve less BIA interference,

as you say, in the operation of what are now called contract schools.

You say, "Once a grant is provided, a school would be required to submit annual reports but would not reapply annually."

If the school is accredited by an accrediting agency certified by the Secretary of Education or by a tribal division of education or compliance with BIA standards, why should they have to reapply annually? I ran a college for seven years, and we went through an accreditation procedure, and if I thought that every year I would have to reapply to run that college, I would go right through the roof. It would be impossible to operate.

Mr. SWIMMER. I agree, and I believe we could support the concept certainly of not having to reapply in a continuous year to year program. Our concern, however, is two-fold. One is that it practically grandfathers in all of the existing grant or contract applications that are there and giving them somewhat of a first shot at the funding while it would provide a mechanism taking 18 months for any new contract or grant to come on board.

Second, we don't really believe that one out of four requirements to sustain that are sufficient to provide the necessary oversight to see that there is a good quality program. We think that can be remedied.

Senator EVANS. We would say which one or several of those four are inadequate?

Mr. SWIMMER. Well, if the only thing that is necessary to receive a continuing grant is tribal approval through whatever process they might have, we don't think that is sufficient. We believe that an accrediting agency of some kind, whether it is State or regional, should have an accrediting review of that particular school. And I think that is true whether it is State government or Federal Government. You don't accredit your own. You have other agencies that do that.

Senator EVANS. But assuming they were accredited by tribal division of education, you don't believe that that would be even one of the four under any circumstances?

Mr. SWIMMER. Not the only one of the four. I think that the tribes should certainly take an interest in what is going on in their schools and have a mechanism for determining the quality of schools they have, but I think at the same time you need a professional accrediting organization that has that as its role in order to have this continuous grant.

I certainly have no problem with its being in addition to, but in this case, it is simply one of the following four areas that can do it.

Senator EVANS. Do you think the other three are adequate to have multi-year renewal of contracts?

Mr. SWIMMER. I would like to talk some more about it. I am not sure—I would agree that if the schools are accredited by an accrediting organization that that would be sufficient in my mind to continue their existence.

Senator EVANS. You may want further commentary on that, but as I understand your testimony, you don't have problems with annual reapplication.

Mr. SWIMMER. No.

Senator EVANS. If there is satisfactory authorization in the first place.

Mr. SWIMMER. Absolutely.

Senator EVANS. How long a contract would you believe would be appropriate before some recertification or reaccreditation would be appropriate?

Mr. SWIMMER. Well, the accreditation would be an on-going situation or the outside evaluation as proposed. The contract, as far as I am concerned, could be indefinite. It should continue. The tribe should know that it is going to continue indefinitely, because if they are going to start a school, they don't want to worry each year about closing one.

Senator EVANS. Sure, but accreditation, typically at least at higher levels and I think at secondary school levels where they are accredited, is for a number of years. It is typically college accreditation on a trial basis or an initial basis sometimes for 5 years, but then you can receive accreditation for a 10-year period.

Mr. SWIMMER. Whatever is applicable in that particular situation by that accrediting agency, if they give a 3-year or 5-year accreditation. The point is that if something happens and the school is not being operated in an accredited manner, there is an agency that the population can appeal to. They could come back and do a recertification in less time, but we would accept whatever the certification standards are of that accrediting agency.

Senator EVANS. Now, you go on to say that if you get into a system like that of multiple year grants to schools which are accredited, then the Federal role is to accept applications and reports and funnel money to them, and the Secretary cannot be expected to be accountable for the results, and you say that is unacceptable.

What level of oversight or management or whatever word you want to use is appropriate in your view from the Bureau?

Mr. SWIMMER. I would like to have as little as possible. I am not asking in that paragraph to have a great deal of oversight. We have to evaluate the contract. We have to be the pass-through, apparently, for the bureaucracy, but we would like to see the role of the Bureau minimized and that, of course, gets back to my whole theory to create more flexibility with the tribes, give them more freedom, but hold them accountable.

My statement there is made, again, in reference to the self-accreditation by the tribe. If the amendments stand and the tribe merely sends us a statement saying we accredit our program, we are just afraid that it is not sufficient, that there should be an accrediting agency backing that up.

Senator EVANS. You say down at the bottom of that page 4 that the grant proposal is a flawed step in that direction. There must be a credible evaluation procedure and the reports must not only be submitted to BIA but should be reviewed, et cetera.

Has the BIA done any recent evaluation of Indian education programs and, if so, to what degree were the tribes involved in the process itself?

Mr. SWIMMER. I really can't speak to that in detail. We do evaluate the contract that is with the tribe on any contracted schools. We have done some recent comparison on test scores and what have you.

As far as evaluating the contract schools, that is done in conjunction with the tribe. As far as evaluating our own programs, that is something that is done usually at the agency level and reports sent in.

Senator EVANS. You are saying you are concerned about losing this opportunity for supervision or for evaluation and that if you do nothing more than put out the money on a formula basis, you cannot be responsible for the evaluation of the quality of the program. I am just trying to get an idea of what you do under current law to ensure the quality and evaluation of programs.

Mr. SWIMMER. Well, we are not doing sufficient evaluation under current law. We are held accountable for the dollars that are spent and the program being in place, and we do review the programs for their performance. We ensure that there are teachers present that are teaching in the classrooms. As far as the quality of the program is concerned, we are not able to do the quality evaluation that I think should be done.

But again my point is that we are, even under those conditions, still legally responsible for those funds and for that program. Under the proposal that I believe is in S. 1645, we still remain so, but we don't either have the ability to go out and do the proper, if we were doing it, the proper evaluation and the monitoring of the schools.

Senator EVANS. Your inability to do so now is for what reason?

Mr. SWIMMER. I would say that the additional review evaluation that could be done could be done with additional resources.

Senator EVANS. It is not being done now because there aren't sufficient resources to do it?

Mr. SWIMMER. Well, in some areas I think that we are short, and in some cases it is because we have authority but we haven't been able to hire the people, and we have been in that process.

Senator EVANS. Why haven't you been able to hire them?

Mr. SWIMMER. There appears to be a shortage of Indian education people, and we have, in several cases, been advertising and looking for staff to bring on board and fill positions that need to be filled so that we can continue to do the work that we should be doing.

Senator EVANS. And nobody steps forward?

Mr. SWIMMER. We have had some very reluctant candidates. We have had a difficult time in some areas finding a specialist. In some areas of the country, people don't want to come to Washington.

Senator EVANS. I can understand that.

Mr. SWIMMER. I am not saying they are not there, but we are spending a long time looking for them and trying to find people to do that. We also, under the current system of 93-638 contracting, have to use what are called contract monitors who are not necessarily education people but they are monitoring the actual, as it is termed, procurement. It is more like a procurement contract. So, they are monitoring, as I said, expenditures of funds, the staffing levels, and that kind of thing and sometimes, of course, the quality isn't monitored.

Senator EVANS. Finally, you mentioned several figures in relationship to indirect cost. First, in what direction would you like to

move in terms of devising some kind of formula for indirect cost? Would you like to standardize it or—

Mr. SWIMMER. My position, I think, is well known on it. I would like to have a flat fee concept. I would like to say that for a certain number of dollar amount of contracts that the contractor receive a fee. That has been controversial. I suppose if I had suggested a 50 percent fee, it would not have been as controversial as the number I suggested.

However, that is again something that has been going through a lot of dialog over the last couple of years with tribal people. We have been trying to receive and have received a lot of information.

It is difficult, though, to say, particularly in education, that the overhead from one tribe to another or one education program to another should be as different as 60 percent to 15 percent. I guess, unfortunately, what we believe now is that the system is flawed, but we haven't reach agreement, I guess, with the committee or with the tribes on what a good standard would be or a good formula.

I would accept anything that comes across as rational, fair, and provides an adequate amount of money, but I think we have to be careful that we don't set up the money in a way that it becomes the object and education takes a back seat.

Senator EVANS. I understand that. Is part of this a lack of clarity in what constitutes appropriate overhead, what fits in that category for these costs and what fits in the normal educational categories?

Mr. SWIMMER. In many cases, that is true.

Senator EVANS. So, if we were clearer or could be clearer in what constitutes overhead costs, that in itself might bring these costs closer together?

Mr. SWIMMER. It could. I would be glad to give the committee just a quick idea of what could happen to show you what our problem is.

You can have three programs side by side and you had a \$100,000 program and the first program hires a CPA to be their accountant and manage the books and that tribe pays that CPA \$30,000, the next tribe hires a bookkeeper because \$100,000 isn't that much to take care of so they hire a bookkeeper at \$12,500, and the third tribe hires that same individual and maybe buys an IBM computer for a total cost of \$50,000.

If you took that segment alone, you would come up with an indirect cost rate in the third instance of 50 percent, in the second of 12.5 percent, and in the first of 25 percent. So, just with this example it gives you an idea of what we go through in trying to determine what these rates are. Yet, no one would deny that each tribe would need bookkeeping expertise.

Now, the level of that expertise and the quantity and the machinery to go with it and all is that catch-22. It is why I suggested if we could do a study or if we could come up with, say, what the industry is doing in this area or what is called overhead costs by someone else, if we could determine that and then permit that on a fee basis of some kind—whether it is 10, 20, 30, or 40 percent—we could at least get a common understanding of what it is.

It would also be an incentive, in my opinion, to avoid the tremendous build-up of overhead in order to capture those costs with more emphasis being on the instruction.

Senator EVANS. We have seen that happen in common schools generally throughout the country with a smaller and smaller percentage of all personnel in common schools actually accredited teachers in the classroom and a larger and larger percentage outside the classroom in various specialty operations. I might say in passing that many of those are required by silly laws that we pass, and then we go back and investigate why there aren't enough teachers in the classroom. So, we are responsible as much as anybody for some of this problem.

However, is it also possible—I think we would all like to find some simple and straightforward and easy answer that would both be adequate in terms of indirect cost and not encouraging of excess costs. That would be marvelous if we could find it. Is it also true that you can take two programs of the same size and, because of the nature of the programs themselves, find that one would simply require a whole lot larger overhead cost than the other?

For instance, you mentioned several comparisons of fairly small programs. One, as I remember, was 50 students with \$100,000 budget and another one of about the same size, and the two had very different overhead costs.

If you had one school operation with 50 students and all 50 students are in the same classroom or the same two classrooms in the same building and are centralized, that might have a quite different overhead cost than another system where the transportation, the isolation, the scattering is such that the 50 students are located in three different schools and many miles apart.

Wouldn't one have a substantially different overhead cost than the other?

Mr. SWIMMER. I think those factors could apply to that, but I also believe that in either case, if we were able to define what overhead is, you would find them very similar. In the examples you give, there shouldn't be a requirement for more than one principal, for instance, even though in one case he has to be in three locations or control three locations versus one.

Transportation costs are usually direct expense and education is direct. It might have more program costs in your case.

However, you are right. The variables are interminable. However, again, I think there could be some allowance even in a formula or a fixed fee of rural versus urban and large versus small with some analysis of that done. I am not sure that we have yet done the full analysis to determine that.

Senator EVANS. Well, I don't envy you the task. That has been a constant sticking point in a lot of other relationships between other agencies and their contractors. Higher education has had a constant running war with various agencies of the Federal Government on what constitutes appropriate indirect cost. I think a number of other agencies and contractors do as well.

If you resolve that problem to the satisfaction of those that you deal with, package it and sell it, because others would like to find the same answers.

I think at least for the moment I am out of questions. We will keep the record open.

Oh, wait a moment. I am sorry. Senator Melcher has asked that this question be asked.

At present, the BIA, by policy, will not allow general assistance recipients to attend post-secondary and continue to be eligible for GA. This is contrary to policy for AFDC and other welfare recipients. Title IV of the bill deals with Navajo Community College. What is the BIA rationale for this GA policy?

Mr. SWIMMER. Well, the rationale for it was that we did a pilot on, I believe, two or three reservations and tribally controlled community colleges. Essentially, what we did is we permitted general assistance to continue to be drawn by the student going to the TCC. I don't believe that we have had a case of success as a result of that. The individuals did not complete their education or have continued but have not reached satisfactory conclusion.

In discussing this, however, it is my opinion, and I have again, instructed our program people that I would like to see the general assistance continued for those people who are going to the tribally controlled community colleges. In some cases, it might be offset by grants, scholarships, or otherwise, but I think that it sends the wrong message to Indian people to tell them that if they go to school, they are going to lose money or they are going to get their grant cut.

Even though we don't have a record of success for those people, I have to assume that simply sitting in a classroom has helped them somewhat and that it is not costing any more. It may come out of another program if it is a scholarship but we are implementing that as a policy in the Bureau to permit students to attend TCC's and continue their general assistance as long as it is not giving them more than what they were receiving if they were also on grants or scholarships, and the reverse is true, too, that they wouldn't be receiving a grant or scholarship if they continued the general assistance.

I think the problem that we face, though, is perhaps asking them for some kind of time limit, 2 years, 4 years, 3 years, or even a standard of satisfactory performance so that people aren't simply going to the school in order to avoid looking for employment, because it does conflict in some way with the policy of the Bureau that if you are drawing general assistance, you are supposed to be looking for employment. Obviously, if you are in school, you are not then looking for employment. You are hoping later on you will get it.

But what I would ask along with some of the other ideas that I proposed last year is that in the process of looking for work that it would include improving the individual's capacity for work which would include education.

So, I am asking that the policy be changed and changing it to say that people who attend tribally controlled community colleges may continue receiving general assistance if it is necessary for their support, but I am advising the committee that we are also looking at a way of maybe encouraging that person not to become a perpetual student but at least put some standard of performance in there.

Senator EVANS. So, do I understand correctly then from Senator Melcher's question that although current policy does not allow it, you are in the process of modifying that policy to allow the eligibility for GA to continue for students?

Mr. SWIMMER. That is correct.

Senator EVANS. Now, you say in tribally controlled community colleges. How about—

Mr. SWIMMER. With any educational institution.

Senator EVANS. Any educational institution?

Mr. SWIMMER. Yes.

Senator EVANS. I can tell you that there are successes. There are very substantial successes. I know from a number of students we had at the college I headed. The Evergreen State College. There were a number of students who came as general assistance or AFDC recipients, finished their college education, got very substantial and good jobs, became independent, and are working, producing members of the community. It won't work in every case, but every case it works in is a success compared to the alternatives.

Mr. SWIMMER. I believe that, too.

Senator EVANS. All right. Thank you very much. I have no further questions. Thank you very much, Mr. Swimmer.

We are now ready for panel 1. This includes Carmen Taylor, Executive Director, National Indian School Board Association, Albuquerque, New Mexico; Reva Crawford, Co-chairperson, National Indian Adult Education Association, Boston, Massachusetts; Lincoln White, Executive Director, National Advisory Council on Indian Education, Washington, DC; and John Forkenbrock, Washington Representative, Association of Community and Tribal Schools of Washington, DC.

We can bring chairs up. We are a little crowded there, but I think that we can get around the table.

We are pleased to welcome this panel here. You had an opportunity to listen to some of the testimony which has occurred to date. We would be delighted to have you summarize the testimony that you do have, and all testimony will be entered into the record in full.

With that, let's start with Carmen Taylor.

STATEMENT OF CARMEN TAYLOR, EXECUTIVE DIRECTOR, NATIONAL INDIAN SCHOOL BOARD ASSOCIATION, ALBUQUERQUE, NM

Ms. TAYLOR. Good morning and thank you.

On behalf of the National Indian School Board Association membership, I would like to thank you for the opportunity to testify today. I will try to confine my comments to some of the differences between the two versions of the bill.

I would like to start out by saying, after listening to the testimony this morning, that Assistant Secretary Swimmer stated that he did not think there was a need to amend Pub. L. 95-561. Theoretically, I guess we would agree with that. We feel that the original version of the bill contained all the necessary ingredients to facilitate local control in the Indian communities.

As a practical matter, however, as you have seen and discussed earlier this morning, that hasn't happened. There are still many regulations that need to be developed and implemented to really make it work.

That really is the premise on which many of these legislative proposals have been made. I think it was also alluded to this morning that maybe some of this was based on the alleged proposal for transferring the schools to the tribes and to the States.

Although that may have been built into what came out in the final version, really the premise of this legislation was based on a number of individuals, board members, administrators, tribal education directors sitting down and talking about going through Pub. L. 95-561 and discussing what has been implemented, what hasn't been implemented, what has worked, what isn't working, and why.

A lot of it came down to some philosophical discussion on some policy matters, sort of some discussion about current trends. Those current trends have not led us to believe that there has been a full commitment to implementing local control, and that really is the premise for the development of a lot of what finally was contained in the drafts of both S. 1645 and H.R. 5.

In the legislation, we do support the statutory authority which is provided for Bureau funded schools. We think that is particularly important in light of some of the recent education initiatives that have been made. In fact, we would like to see some additional language that would eliminate the impression that is provided that the Assistant Secretary can do this, because there are procedures provided to follow for activities which really the rest of the section prohibits him from undertaking.

That is that "nothing in this subsection shall be interpreted as in any way superceding or modifying the prohibitions contained in subsection (g)(2) of this section."

We do appreciate the section 103 on emergency and special situations, and we appreciate the fact that S. 1645 provides specific timelines within which the Secretary must make provision to reopen a school temporarily closed because of an unsafe condition and hope that that language is retained in the final version of this bill.

On the enactment of regulations, we do support that provision. The reason again that we discussed the freezing of regulations is because there have been many negative proposals that have come up on the development of certain proposals or the elimination of certain proposals in regulations.

On administrative costs, that has been one of the more controversial issues in this bill. S. 1645 directs the Secretary to develop an administrative cost formula through regulation. However, we support the concept of a statutory formula, and I think the reason is obvious.

In all of the 9 or 10 years that there have been to develop some kind of formula in-house, it has not been done.

One of the concerns I know about the formula contained within H.R. 5 is that the costs were included within ISEP, and that created a lot of anxiety within Bureau operated schools because there was a fear that the money, if there were insufficient dollars for the administrative cost formula, it would create a disadvantage for the Bureau operated schools.

Again, that was not the original intent, but if there is room for interpretation, then certainly it is something we need to clarify.

Originally, the administrative cost formula dollars were included in ISEP to create more stability and for purposes of a more timely and predictable distribution. Perhaps this concept can be retained by making the administrative cost formula more like a sub-activity of ISEP, maybe much more the same as transportation or school board expenses are currently handled.

What that does do is it puts the dollars under the Office of Indian Education programs and ties the distribution and allocation to ISEP but does not potentially harm one group of schools, as some people have thought might be the case.

Under the area of personnel, we strongly support the idea of studying salaries and making sure that there is some equitability.

As someone who works with Bureau operated schools, I would like to add one other suggestion, and that is that an area that Bureau operated schools have a particular problem with is in the area of wage grade employees, in other words, those employees such as janitors and cooks. In many instances, those janitors and cooks, because of the way the wage grade scales are established, are making more money than teachers and principals.

We are concerned that there might be a way that we can help establish better wage grade scales by looking at using as a comparison those same kinds of positions in school districts where we have schools established currently.

For the record, I am also submitting testimony that I provided before the Joint Economic Committee in Santa Fe a couple of weeks ago, because I think it provides a much better background about some of the rationale that went into the development of some of the amendments that are proposed in this piece of legislation, and I will submit that for the record.

Senator EVANS. We will be happy to include that in the record. Thank you very much.

[Prepared statement of Ms. Taylor appears in the appendix.]

Senator EVANS. Ms. Crawford, we would be happy to hear from you now.

STATEMENT OF REVA CRAWFORD, NATIONAL INDIAN ADULT EDUCATION ASSOCIATION, BOSTON, MA

Ms. CRAWFORD. Good morning. My name is Reva Crawford, and I am co-chairperson of the National Indian Adult Education Association.

I am here on behalf of members of National Indian Adult Education Association and Indian students across the country to appear, I think for the first time, to tell you about the needs of your smallest program in Indian education; smallest in terms of dollars, but we think probably one of the most important, if not the most important, that you authorize in the Department of Education for Indian education.

There are a few facts I am going to try to condense which we very much would like for you to consider. Some of the changes which we would like you to consider are not found in either the

Senate bill or in H.R. 5, and we hope you will consider them as additions. I would like to run through them briefly.

First of all, I would like to say that insofar as we can tell within the Department of Education, Office of Indian Education, the appropriation for adult education is the only one of the programs which serves only basic needs and for which there just are no other resources available. You have about 60,000 Indian adults across the country who need to learn to read, to write, to graduate from high school, and a number of these people your colleagues did not provide schools for in the past. It wasn't a matter of Indians not wanting to go to school.

I think most of you know that Hopi has just got a high school. Mississippi Choctaw got a high school in 1967, and they were boarding elementary school children until very recently.

A lot of Indian adults have not had the opportunity to go to school in the past.

One of the things that we find totally incomprehensible is that we are now serving about 5 percent of the need for Indian adult education through 27 grants in the U.S. Department of Education under Indian education. That is with a \$3 million appropriation that in 1979 was \$5.93 million, a 50 percent reduction. We don't understand why our adult needs are not important.

I would like to tell you a little bit about—you know, obviously, that the Bureau participates in adult education as well, and I would like to tell you something about that. Unfortunately, I can't. I can't because when we ask them for funding lists, they don't have them. They don't know who their grantees are. I had to laugh a little when Mr. Swimmer was testifying about the slowness of regulations, because it is my understanding that adult education has been present as a Bureau program since after World War II, and yet there still are no regulations to define what constitutes adult education, and that is indeed slow.

We have also a problem in defining Bureau adult education, because it is used for a variety of purposes besides adult literacy and high school completion.

To give you an example of direct operated Bureau programs in the past before some of them were tribally contracted, I was a part of a program that contracted Bureau funds in Mississippi Choctaw. The Bureau had operated the program there for 16 years and had only 25 GED graduates in 16 years.

We would like to tell you a few of the things that we think you need to consider. One, of course, is appropriation, and that is important. The second is cyclic funding. You are playing round robin now with funds in the Department of Education. You are giving to one program one year and taking it away to give to another program the next year.

I am not really sure whom we are helping by that. If we get students in our classes and we begin to teach them to read and write, and then we compete all over again the next year and somebody next door gets the money in the next State and they start students all over again who don't finish because the money the next year then goes to another person, I am not really sure what message we are sending to students or even what we are accomplishing.

So, we are very concerned about the cyclic funding.

We are concerned that, in section 422 under EPD, there is, we think, an attempt not to hold with the intent of Congress. There are two sections to EPD. The 100(d) was intended for colleges and universities to offer programs and 422 for tribes and organizations.

It says directly that these are for training not just teachers and not just principals and not just those kinds of people but people like teacher aides and ancillary school personnel. There aren't any baccalaureate programs for teacher aides. There is only one baccalaureate program in the whole United States for adult education. But funding points are based on offering programs at the Bachelor's and graduate levels.

Most early childhood teachers go through a two-year associate program, and yet the Department of Education gives priority points which result in no funding for training under EPD for needs of tribes and Indian organizations who train at a level below the baccalaureate or masters level. We are leaving out early childhood, and we are leaving out adult education.

We also are concerned because our adult education students are being treated unfairly in the receipt of fellowship applications from the U.S. Department of Education. We find there are criteria for example, on which points are based which require an applicant to get letters from Part A directors when there wasn't any Part A when they were children, or from their high school principal but their high school principals maybe dead now. That this is not particularly fair to older applicants.

We would like to tell you a couple of things, though, that we think are good. I doubt you heard from the Department of Education or the Bureau for what your money has been spent, because they don't get the kind of hard data which you would like to receive. So, I would like to give you a couple of figures about degree of success.

We have looked at one urban program and one reservation program. We found that when students enter adult education programs, the majority of them are on public assistance. In a five-year followup study we found after adult education completion, only 5 percent were on public assistance.

We have looked at income gains. We have looked at employment. We have found that both of those have risen very, very sharply following adult education participation. We found average income gains of \$5000 per year after participation in adult education.

We really would like to urge you to consider: 1.) seeing that there is an equitable appropriation for Indian adult education under Title IV; and, 2) Either through direct language in the bill or through discussions with the Department of Education, try to eliminate provisions that are discriminatory for older Indian students.

There is a great need for technical assistance in the field, and we hope that you consider recommendations found in our written testimony.

Thank you.

[Prepared statement of Ms Crawford appears in the appendix.]

The CHAIRMAN. Our next witness is the Executive Director of the National Advisory Council on Indian Education, Mr. Lincoln White.

STATEMENT OF LINCOLN WHITE, EXECUTIVE DIRECTOR, NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION, WASHINGTON, DC

Mr. WHITE. Mr. Chairman and members of the committee, I am very pleased to have this opportunity to appear today on behalf of Chairman Buck Martin and the 14 other members of the National Advisory Council.

We appreciate the time that your committee and staff has devoted to putting together provisions to reauthorize the Indian Education Act of 1972. We are especially pleased and feel very fine about the provision that would call for Indian preference in the U.S. Department of Education.

It should be noted that the Indian Education Act of 1972 was actually implemented in 1973. The annual report presented by the National Advisory Council on just about every occasion did recommend, based on advisement from Indian people across the land and Alaskan Natives, that Indian preference be exercised as one of the personnel approaches in implementation of this law. There is no need at this time to go into any detail as to why Indian people should be selected or should be given one preference. Maybe just one quote from some of the typical testimony that we receive in the NACIE office will suffice.

"Programs that are established for Indian people are best operated when Indian people themselves have control to implement such programs. Only through this concept will Indian self-determination become a reality."

We have discussed this in many of our conversations. We know that if Indian preference can be implemented within the Bureau of Indian Affairs and the Indian Health Service, there should be no barrier to exercising this in the Department of Education Indian education programs.

The other major issue that NACIE would like to address is that of eligibility for services. We have had several conversations with your committee on this matter expressing the Council's bottom line opinion. The Council feels very strongly that when it comes to determining who is eligible for Indian and Alaskan Native services, the American Indian tribes, the bands, and the Indian villages should make that final determination, and we feel that written into the law should be a provision that this government to government connection that now exists be preserved and that the parent advisory committees and the LEA's work in conjunction with the tribes and these other entities to determine who is eligible.

We realize that bringing about regulations to make this equitable is very difficult, but we feel this is very important.

The next point that we wish to mention very briefly and certainly can provide additional information on at a later time is that we have consistently recommended that the Office of Indian Education programs within the Department of Education become again an independent agency as it was originally intended when the law was implemented in 1973.

We feel that the directorship should be raised to the position of an assistant secretary reporting directly to the Secretary. We know that this change came about when the new Department of Educa-

tion was created back in 1979 or 1980. Then, it was the prerogative of the Secretary of Education at that time to place Indian education under the direct supervision of the Office of the Assistant Secretary of Elementary and Secondary Education.

So, we have the statistics that we can send you to indicate the drastic effect that this one particular change had on the number of qualified Indian people employed within the Department after this act was implemented. It went from a high of 55 percent of American Indian staff to a low of 4 percent, and it is about the same percentage at the present time.

Speeding up this process of just hitting some of the highlights, we also recommend that the future appropriations for the implementation of the Indian Education Act of 1972, as amended, should be looked at very carefully and should be increased to take care of those inflationary factors that have accrued in the U.S. economy which have tended to bring less money to the various Title IV programs and, consequently, have had a negative effect on the quality of education.

The National Advisory Council is fully aware of some of the rapid strides that are being made in this society to improve education for all people of this Nation. We feel very strongly that Indian education services serving American Indians and Alaskan Natives needs to move quite rapidly to try to catch up with the rest of our society.

Mr. Chairman, NACIE would like to submit the supporting testimony at this time.

With that, I will close and will respond to any question the committee may have.

[Prepared statement of Mr. White appears in the appendix.]

The CHAIRMAN. Our next witness is the Washington Representative of the Association of Community Tribal Schools, John Forkenbrock.

STATEMENT OF JOHN FORKENBROCK, WASHINGTON REPRESENTATIVE, ASSOCIATION OF COMMUNITY TRIBAL SCHOOLS, WASHINGTON, DC

Mr. FORKENBROCK. Thank you, Mr. Chairman.

I am here this morning to testify on behalf of the Association of Community Tribal Schools. I am acting as stand-in for Mr. Roger Bordeaux who is the Executive Director. Roger is currently a graduate student at the University of South Dakota working on his administrative certification so he can become an administrator in one of the schools that we are here today to represent.

You weren't here earlier this morning, Senator, when Assistant Secretary Swimmer was here, but as you might expect, his testimony was geared primarily at opposing the entire text of the legislation. It kind of brings to mind an old adage that goes something like the more things change, the more they stay the same.

About 10 years ago almost to the day, the Bureau testified in the other body on legislation that became Public Law 95-561. At that particular time, I was staff on the House Education and Labor Committee and worked on that particular legislation. I recall very vividly that almost exactly the same words were said 10 years ago

by those people in the Bureau of Indian Affairs that they opposed this legislation which became Public Law 95-561 which Mr. Swimmer mentioned earlier was a great piece of legislation and we didn't need this one because that is on the books.

That almost exact same phrase was used 10 years ago by the Bureau when they said they didn't need what became 95-561 because they could do it administratively.

Well, 95-561 became law over their opposition. In fact, they became initially great supporters of that particular legislation in its early stages.

It is true, as Carmen Taylor mentioned earlier, that there would be no need for this legislation that we are dealing with this morning or this afternoon—I guess it is now—if Public Law 95-561 was implemented as it was originally intended to be implemented, if the concepts and the provisions in that legislation were fully carried out.

Unfortunately, it is not being done. From the contract school perspective—that is what I am here this morning to speak to you about—we support the content of S. 1645 with one additional inclusion, and that is that we need very much from a contract school perspective to have some sort of administrative cost formula that addresses and meets the needs of our schools in terms of taking care of those costs dealing with operating that school.

We consider ourselves to be very similar to a local education agency in a State whose funds are raised through local taxes so you can develop budgets in advance and can work with the knowledge of how much money you are going to have to operate with. Currently, contract schools cannot do that.

We have no control over what the actual amount will be that is appropriated to fund the indirect costs which now is a negotiated amount, as you know, set by the Inspector General's office. We have no control over the way the area offices use those dollars. We may think we are getting a certain amount in indirect costs. However, we don't and sometimes, as late as 2 months before the end of the fiscal year, we find out that the Bureau has decided to fund another contract and we find ourselves losing, in one case, up to 13 percent of what we thought we needed.

So, we have no stability in the receipt of contract dollars, Mr. Chairman. For that reason, we are very strongly in support of inclusion of an administrative cost formulae in the legislation similar to what is in H.R. 5 which passed the House.

Now, there is one item in addition to that which we support that is somewhat of a concern to some of my colleagues at this table and behind me. That is that we also support the inclusion in the distribution of those monies in the ISEP formula.

We do that because only by funneling it through that process can we count on an amount of money that we know is going to be there and a percentage that we know has been determined by a formula and that will be there in a timely fashion, not 2 months before the end of the fiscal year.

Now, we understand and appreciate the concerns that are raised by, as I said, some of my colleagues who are concerned about putting it into ISEP in that it may mean, if the appropriation were

not adequate, a loss in program dollars which are obviously used to educate the Indian students in BIA funded schools.

We share that concern. We in no way want to deprive the dollars where the dollars ought to go, that is, to programs for the students.

We have done some calculating of our own, that is, the Association has, and we beg to differ with the statistics that the Bureau provided earlier this morning. I admit the fact that the Bureau's analysis is based on the language contained in the House bill which does have some problems, and we admit that.

We have presented to the committee staff earlier this week an alternative formula which would be phased in over a 3-year period of time and which also contains a hold harmless clause which would guarantee that no school could receive less on a weighted per student unit than what they received in fiscal year 1987. In other words, if the funds were not there to channel the administrative cost formula through the ISEP formula to at least allow us to ensure that the program dollars would remain the same as they were in fiscal year 1987, the formula could not be implemented, and we do it over a 3-year period.

The Bureau said this morning that they estimated the amount of money needed for contract support in an administrative cost formula would be \$10 million. We say that the amount above what is now funneled to contract schools through contract support for ISEP for operation and maintenance, transportation, the chapter programs of the Department of Education currently is about \$11 million in toto.

We have calculation, using our formula, the amount needed for indirect cost through administrative cost rate for the 60 contract schools that are now in existence would be around \$14.6 million. So, you are only talking about \$3.6 million in addition to what is now being received by contract schools, not \$10 million as the Bureau is suggesting.

In terms of trying to relate this to the amount of money that is currently in ISEP and to try to address the concerns expressed by some that it may take money from program dollars, if we would take the amount in 1988 that is suggested by the Bureau in their justification of \$162 million which is what the ISEP request is for this year and take 68,500 weighted units which is about what is there at this time—by the way, the Bureau has not seen an increase in WSU's over the last 5 years; in fact, they have seen a decrease as opposed to an increase in terms of the actual number of students and units that have come to be.

What I am saying is if we take those two figures and we consider that the new formula is phased in over a 3-year period, as I said, the amount needed in addition to the \$11 million already funding indirect costs would be an additional \$1.3 million per year. This is the 3-year phase-in.

Thus, the total indirect costs for fiscal year 1989, for example, would be \$12.3 million rather than \$11 million which is current. Fiscal year 1990 would require \$13.6 million, and for 1991, it would cost \$14.9 million.

Now, if we presume that the ISEP funding growth rate remains at about 2.7 percent which is what it has grown over the average of the last 5 years, ISEP would grow not including the money in the

formula to \$166.682 million in 1989, \$171.182 in 1990, and \$175.803 million in 1991.

If then you would add the WSU's, assuming they remained at about 68,500, the amount of additional WSU's generated by the formula—because, Mr. Chairman, the way the formula would work is the increase that a school would get off the formula would be reflected in an increase in their WSU's at the local school. If you factor the additional WSU's that would come about as a result of putting the formula into ISEP, it would generate about 73,950 WSU's above the 68,500 which was about the constant base.

This would be in 1989. In 1990, it would go up to 74,600, and in 1991, it would go up to 75,320.

Now, if we take the total amount of money generated by the WSU's, the \$166 million, the \$171 million, and the \$175 million respectively for each of these three years, and add into that the amount of indirect cost generated by using the phase-in process, the amount per WSU in fiscal year 1989 would be \$2405 which is above what the current year was. In 1990, it would be \$2474, and in 1991, it would be \$2519.

So, even using the most conservative increase in terms of ISEP funding over the past five years, the 2.7 percent, there would be adequate funds generated through the formula that we propose over a three-year phase-in period to fund the program through the ISEP formula.

Even if you would take the worst case scenario, assuming that there is no increase in ISEP, let's suppose it remains \$162 million for the next three years. Suppose there is no increase in indirect costs and remains at \$11 million over the next three years. You still would begin to phase in—let me back up a second.

You take the \$11 million. You would phase it in over a three-year period, as we have in the formula. But as I said, there is no increase whatsoever to the ISEP funding.

In fiscal year 1989, the funding level would be \$2343 per WSU. In 1990, it would be \$2323, and in 1991, it would be \$2314.

So, what I am saying is that in almost all scenarios that you might use, absent, of course the Gramm-Rudman, absent, of course, other various kinds of reductions, et cetera, we could generate the funds necessary to fund the formula through ISEP. If there would be some sort of deficit for whatever reason, the hold harmless that we are suggesting would guarantee that the ISEP weighted units would remain at the 1987 level and the formula would not then be put into effect until such time as the funds were adequate.

Mr. Chairman, please realize that for the contract schools, this is the money by which they need to operate. We don't anticipate the various kinds of administrative cost rates that Mr. Swimmer suggested. We have done a run on our own based on the \$14.6 million that I mentioned to you earlier, and our schools—and I can provide this for the committee—generate an indirect cost rate or administrative cost rate that is very compatible based on their size. It is done entirely on the amount of money they receive by program.

Mr. Swimmer used a couple of examples—I am not quite sure where he got them—using two schools of similar size having indirect rates with one at about 50 or 60 percent and one at about 15

percent. That is just totally not the case in the process and the formula which we have developed.

I would ask that the committee strongly consider including the administrative cost formula in S. 1645 along the same lines as is done in H.R. 5, that is, that it be carried out through ISEP, knowing full well that we support a phase-in process as well as a hold harmless.

I might also mention, Mr. Chairman, again addressing Mr. Swimmer's concern about the overall idea of developing a formula, is that this suggested administrative formula is only in a sense temporary in terms of the way we present it. We are asking the Bureau to contract with a public accounting firm to develop an indirect rate that would be rational and justified based on the kinds of programs that our contract schools are running.

So, we like to think that we are taking a very rational approach to this but yet an approach that will ensure contract schools the funds they need that are necessary to operate.

One last thing that is not included in S. 1645 that I think I would like to see the committee consider adding to S. 1645 would be the development and the call for a White House conference on Indian education. Some draft legislation has been developed, and I think that many of the things that have been said this morning dealing with public schools and the fact that 82 percent or 87 percent—whatever that figure is—of our Indian children are educated in public schools—what is the Federal policy in terms of its responsibility for Indian children enrolled in public schools?

There are policies and procedures now in effect in Public Law 874, impact aid, which public schools are supposed to follow to ensure that tribes are getting their input into the program which, in many cases, aren't being followed.

So, I beg to differ with some of the generalizations that the Assistant Secretary is making concerning the fact that public education is the answer, because right now within this country in terms of public education and meeting the needs of Indian students, we have a lot of places where Indian input and tribal involvement is nil, and the policies and procedures that are supposed to be followed in the Federal law are not being followed.

So, I think that there is a real need for the Congress to consider the development of legislation that would call for a White House conference on Indian education where all the various experts in the field from all facets of the program—contract schools, BIA operated schools, public schools, private schools, post-secondary as well as elementary and secondary—get together to discuss some of the things that are needed in terms of where Indian education is headed in the 1990's.

With that, Mr. Chairman, I apologize for going over my five minutes, but I thought it was important to be said. Thank you very much for giving me the time.

I would be happy to answer any questions you may have.

[Prepared statement of Mr. Forkenbrock appears in the appendix.]

The CHAIRMAN. Thank you very much.

I am sorry I wasn't here earlier this morning, but a few emergencies suddenly erupted to require my presence elsewhere.

This record will be read by members of this committee and also non-members. Someday, hopefully soon, we will debate this issue before us and resolve the matters set forth in S. 1645.

In order to make certain that the record is complete, I would like to ask a few questions. Some may be obvious, but the record must show them.

My first question of the panel is, is the Government of the United States responsible for the education of Native American Indian children and adults?

Mr. WHITE. Mr. Chairman, I would like to try to respond to that.

As a member of one of the six nation tribes in northern New York State, Mohawk Tribe, and being affiliated with the National Advisory Council which deals with relatively over 575 different entities throughout the United States, after looking at the relationship in my layman's way, I am very sure that there is a strong relationship, political and legal relationship, between the U.S. Government and the tribal governments of this country.

This is well substantiated by the treaties. Of over 300 treaties, 119 had specific mention of provisions related to education. Of all the Federal laws, executive orders, and regulations and so on, there is no doubt in my mind that the United States Government does have a responsibility to ensure that education is properly provided for American Indians from birth throughout their entire lives.

I say this with the feeling that in the time that I have been working with this special area of education and my 40 years in education, I feel that much progress is being made and can be made. There is much to be done in the future, obviously.

Thank you.

The CHAIRMAN. Would all of you agree that there is a special trust relationship between the Government of the United States and the various governments?

Mr. FORKENBROCK. I think it should be clarified and made clear for the record that on two occasions over the last four or five years, the Congress has passed legislation which in fact does make clear that education is a part of the trust. Now, on both occasions, that didn't make it down Pennsylvania Avenue, but the Congress is in fact on record in support of that.

The CHAIRMAN. Now, I have several questions on the quality of education.

What are your latest statistics on dropouts?

Ms. CRAWFORD. If you look at the cumulative dropout rate (from the time a child starts first grade all the way up through when that child's graduating class would have graduated from high school), the cumulative dropout rate tends to be around 60 percent.

The CHAIRMAN. Around 16 percent?

Ms. CRAWFORD. No, 60 percent. Now, in higher education—in college completion, it is even greater than that. Of those who actually begin a college degree, over 90 percent do not finish.

There are very slight gains being made. Some communities have made more gains than others, but the thing that does not seem to be addressed anywhere is that research is starting to show that Indian students have very discretely and physiologically different cognitive processing patterns than do Indo-European language family children, but public schools and BIA schools have taught to

those Indo-European language family children to the frustration and failure of Indian children.

There is no money being provided right now anywhere that I know of—Bureau, Department of Education, anywhere—to do anything about that. Even in the schools that we are running ourselves as Indian people, we haven't had the information to know what was happening. Now that we are beginning to learn about it, we don't have any effective way of dealing with it.

The CHAIRMAN. The cumulative dropout percentage is 60 percent. At the present time, of the number entering high school, what percentage complete high school?

Ms. CRAWFORD. As a national average, I don't have one figure. The last thing that I read suggested that the rates were ranging from 20 to 40 percent or more. The biggest gap seems to be 8th grade and 9th grade, not high school between junior high and high school. A lot of students never make it to high school. The place where we lose most of them is between junior high and high school.

The CHAIRMAN. Of those who complete high school, how do they compare with so-called average non-Indian high school graduates in academic accomplishment?

Mr. WHITE. Senator Inouye, there are one or two benchmark comparisons. Statistics that were presented by the College Board of New York City over a span of—I don't have those statistics with me here—about seven years, and these, I realize, are only a random sampling on the accomplishment of American Indian students who are juniors in high school who have taken the scholastic aptitude tests, American Indians in these cases rated third among all the ethnic groups in our society.

In the mathematical area, Asian Americans rated first, whites second, and American Indians third. In the area of verbal comprehension, white or Caucasian students rated first, Asian Americans second, and American Indians third.

I have those statistics back in my office that indicate that ranking.

Just yesterday in the Chronicle of Higher Education, it indicates similar statistics based on the implementation of the ACT test, the American College Test, for all the ethnic groups. The rating, again, is about the same.

So, there is an indication that American Indian students, when given proper educational opportunities, certainly can perform as well as any other group within our society. Now, there are many pockets where much needs to be done to improve the quality of education.

The CHAIRMAN. Is there a difference in quality of education by regions?

Mr. WHITE. Yes, there is.

The CHAIRMAN. Will you tell us about it?

Mr. WHITE. Geographical isolation, I think, seems to be one of the most critical areas. There is such a wide divergence between the per pupil expenditure on a State basis. When you look at that wide divergence, you can pretty well tell which parts of the Nation are providing the best educational opportunities.

There is a direct relationship between quality and amount of money spent. You convert the money spent into high quality teach-

ers, up to date curricula, strong instructional programs, and all the other things that make up an adequate educational environment.

There is no doubt—there are many statistics that indicate that disparity.

We have some excellent schools within the network of American Indian schools and Alaskan Native schools, and we have some that deserve a great deal of attention.

The CHAIRMAN. I have visited the Santa Fe Indian School, one of the schools singled out by the government as one of the best high schools in the Nation. Is there any disparity on the pay scale of teachers in Indian schools?

Mr. WHITE. Yes; there is.

The CHAIRMAN. Do you have statistics on that?

Mr. WHITE. No; I don't, but I think those can be obtained.

The CHAIRMAN. Where can we get them?

Mr. WHITE. We can get them through the Bureau of Indian Affairs Office of Indian Educational Programs.

The CHAIRMAN. What percentage of those who complete high school go on to higher education?

Mr. WHITE. Sir, I cannot give you a statistic on that. All that I can tell you is that the number of American Indians going on to college is increasing very rapidly. The Chronicle of Higher Education presented a study back in July 1984 indicating they covered all of the colleges and universities throughout the United States, including the two-year colleges, including the privately controlled community colleges, and so on.

That study indicates that, at that time, more than 82,000 American Indians were attending college.

Now, for a person who has been involved in education for quite some time and familiar with the reservation situations, I know that is an exponential increase in the number attending college. So, there is a large percentage that are going on to college at the present time.

The CHAIRMAN. It is a large percentage from almost nothing. Is that it?

Mr. WHITE. Right, from almost nothing.

The CHAIRMAN. So, anything would be a great improvement.

Mr. WHITE. Right. That is correct, sir.

The CHAIRMAN. How do these numbers compare with the non-Indian population of the United States? First, the dropout rate.

Ms. CRAWFORD. With the exception of recent Asian immigrants about whom we have less information, Indian students tend to have the worst record in terms of dropouts nationally. As we said, there is quite a wide range, and it really varies a great deal from reservation to reservation and from urban area to urban area, but on the whole, it is a great deal higher for Indian students than it is for other groups.

The CHAIRMAN. Worse, but twice as bad? Three times as bad?

Ms. CRAWFORD. Without using one national figure for the dropout rate, just for high school, it is hard to tell you that. It ranges anywhere from twice to five times as much, depending upon the community.

I haven't seen any communities with rates less than 20 percent in which I have worked, and you standardly find rates that—for

example, for black communities, you may have 16 percent, and they think that is really high. Other groups may think 10 or 12 percent is very high, but we are standardly talking about rates above 20 percent all the way up to 50 percent or more.

The CHAIRMAN. What role does the Indian leadership play in BIA schools in establishing educational policy?

Ms. TAYLOR. I think that probably varies from community to community and whether or not the schools are contracted or whether they are BIA operated. I know in the case of BIA operated schools, with the passage of P.L. 95-561, there is contained within those regulations that when they finally established school boards with the passage of that law, the school boards would be established in accordance with tribal law, and some tribes have taken that very seriously and have chartered boards and provided ordinances.

In other cases, there still is a void there. Of course, in the case of tribally contracted schools, they have opted to contract directly or through another entity on their reservation to provide education.

We discussed just last week how many tribes have been developing either policies or codes, whether they be education codes, language codes. If I remember correctly, our discussions were that there were probably only three or four tribes that actually have codes enacted at this time.

The CHAIRMAN. The Department of Education is supposed to have a special division or section that concerns itself with Indian education. Is the Indian leadership called upon to provide an input in the establishment of policy by this DOE Indian education section?

Ms. CRAWFORD. I think NACIE will probably want to respond to that since they have a big responsibility for that, but I think several things probably ought to be considered in answering that question. Sometimes the Department of Education doesn't even listen to itself, although certainly they do a much better job, I have to say, than sometimes the Bureau does.

For example, I know in adult education, we spent piles and piles of our program money funding a national study on Indian adult education, a nationwide study, and a lot of us went without things in the field to have that study done. It was finished 8 years ago, and so far as I am aware, it has never been released. And there was a lot of good information in that and still is.

We find that the process is very slow and there is not a good mechanism for doing that beyond NACIE in terms of individual needs of tribes and organizations. We really supported the NACIE process, but we have a feeling they don't always listen to NACIE either.

The Chairman. As some of you are aware, I have spent much time in Indian country this year because of my belief that for too long Washington has determined the nature of the problems in Indian country and provided the solutions to these perceived problem. I felt that the time has come to ask the Indian people as to what they consider to be their problems and beckon their wisdom as to what the solutions should be.

Some of your responses reflect the responses I have been receiving throughout the land.

I believe all of you agree that there is a special trust relationship that exists between the Government of the United States and the various Indian governments, whether it be nations, tribes, or other groups, and that this trust relationship calls upon the United States Government to make certain that education is provided to all Indians who desire such education and are capable of receiving such.

However, apparently, the trust relationship is not carried out to its fullest as intended by Members of Congress and other Administrations, and your response to my question as to the nature of input provided by Indian leadership in the making of education policy ranges from zero to zero plus one, or something like that.

Do you think there is justification to establish a separate board of education made up of Indians to establish educational policy?

Mr. WHITE. Mr. Chairman, I feel that this thought should be explored very carefully and that a special board of regents or board of education or board of trustees should be established to give direction to Indian people and to the Congress and to the Administration on matters pertaining to education pre-kindergarten through continuing education.

With the population that we are dealing with in terms of size and diversity, we could take models from some of the States that have excellent organizational structures such as boards of regents or boards of trustees. This august body could lend that kind of direction.

The small group that I represent is only advisory. All we can do is pass on recommendations.

However, a board of regents or a board of trustees would be, in my mind, a viable idea.

Mr. FORKENBROCK. Mr. Chairman, if I might just briefly mention that the board of directors of the Association of Community Tribal Schools is on record in support of such an approach. In fact, again, your committee staff has the proposed piece of legislation that would create a national board of Indian education that would be developed somewhat similar to, I suppose, the Nuclear Regulatory Commission or the TVA. It would be a quasi-independent entity that would still be accountable, of course, to the Department of the Interior but which would hire staff, and the director of what is now OIEP would be a staff of the board.

The board would be made up of individuals from throughout the Indian community, some of which would be appointed by the Congress, et cetera.

I would echo the comments that Lincoln mentioned as well in that I think its actual structure may still needs to be looked at, but I think, as a concept, it may well be where the future needs to go.

The CHAIRMAN. For some time, I have been doing some research and much reading on the desirability of establishing a separate organization to carry out the special trust relationship that exists in the United States. We have the Bureau of Indian Affairs which is a lesser bureau in the Department of Interior beholden to the Secretary of Interior who, in turn, is beholden, I believe, to the Office of Management and Budget which, in turn, is beholden to the Presi-

dent of the United States, and God knows where it goes beyond that. [Laughter.]

The CHAIRMAN. We do have precedents in our government whenever we find unique problems or unique situations that call for unique solutions. We have the Securities and Exchange Commission, the Federal Reserve Bank, the Federal Deposit Insurance Corporation. These are separate organizations that are not necessarily beholden to the Congress or the executive but are vested with powers of Government to carry out policy.

Do you think something like that might be desirable? I ask this because sadly, I have concluded that whether it is intentional or not, number one, Indian people generally perceive the actions of the BIA as being adversarial. Second, because of this unimportant nature of the Bureau, the bureaucrats who man the positions find themselves not serving as advocates of Indian concerns but as obstacles of Indian concern.

Do you have any ideas as to whether we should have a separate organization with certain powers bestowed upon them by the Congress of the United States?

Ms. CRAWFORD. When Jimmy Carter was running for President, I recall the solution he talked about for a little while was to do away with the Bureau of Indian Affairs and put Indians under the State Department. While we had a little bit of difficulty in imagining Henry Kissinger coming to the reservations in tie and tails for State dinners, there was a little bit of reason in that.

I think there is more reason in it for a lot of us nowadays when we see the Contras getting more in aid than, for example, we have to educate our adults in Indian country.

The resistance that tribes have had when there have been spectacular changes with respect to the Bureau of Indian Affairs is simply ensuring trust responsibility. I think anything that ensures trust responsibility but alleviates some of the burdens is going to be supported by a number of tribes.

However, whatever kind of organization status is come up with, some of us have said for a long time that one of the things we need is the freedom to fail. People laugh when we say that, but public schools, Bureau schools, other people have learned every way that there is to fail with Indian students, and believe me, they have failed them just about every way.

But we don't have a good deal of innovation going on either in the Bureau or the Department of Education or in any other governmental department, because the basis on which money and services are predicated are pretending like you have done the job as best you could do it and that what you did worked so well that you have to do it all over again or you don't get your money.

I think that a lot of us are convinced that if we are ever going to be able to do anything that is really good for our Indian children and our adults, we need some freedom to fail, too.

Ms. TAYLOR. I would like to respond to that as well.

Several months ago, when we first began discussing what finally came out in the draft of S. 1645 and H.R. 5, we discussed how many times we have already amended legislation in an attempt to make it work.

Some of that discussion kind of wandered off to maybe what we really need to do is something drastic, something like a separate board, a separate organization, some kind of a separate entity. We discussed it really in great length.

Our work group, I think, was supportive of it, but we were also hesitant for some of the very reasons that Reva mentioned, and that is that we knew we probably would not have the kind of tribal support that we needed to go forward with some kind of a way out in left field proposal when people were fearful about what would happen to the trust responsibility.

Somehow, there is a real strong tie between trust responsibility and BIA, and we can't seem to think that trust can follow to any other entity.

So I think it is worth exploring.

Mr. FORKENBROCK. Mr. Chairman, real quickly, from a legislative historical point of view, I think Lincoln probably could address this even better than I, NACIE kind of grew out of a seed that was to perhaps not go quite as far as what you are talking about but to explore the idea of a national Indian board which Senator Kennedy proposed back in 1972 and was developed in legislation. I think it is even in the Congressional Record.

However, because of concerns that have just been expressed by the tribes about where they fall in terms of the trust responsibility, et cetera, it was watered down to the extent that NACIE then grew out of that as an advisory council.

So, I think that anything that is done obviously needs to have the sanction of the tribes involved, but I was even at this time hoping that the committee might consider introducing legislation calling for the Indian board of education concept so as to at least have it circulated around the country for discussion, because I think it does need to be put forth for discussion to see where it goes.

I think if it is done correctly, support will sooner or later be there.

The CHAIRMAN. My final question—several of you have mentioned the convening of a White House conference. Is that unanimous among you?

Mr. WHITE. Yes.

Mr. FORKENBROCK. I think I am the one who said it initially, but I think that, at least in terms of discussions I have had with some—and these ladies and gentlemen can speak for themselves—I think the consensus was that yes, it was very much a needed and the time was right for something like this. So, I think it is the consensus, at least from my perspective.

Ms. TAYLOR. I would agree with that.

The Chairman. Well, I thank you all very much.

May I request that you work with the staff of this committee to gather up the best statistics available on Indian education, the nature of the education, the quality of the education, because if we are to seek improvement, we will have to demonstrate to our colleagues why this improvement is necessary. It would be most helpful if you can put your heads together and maybe come forth with some idea as to what an Indian board of trustees, a board of educa-

tion, or board of regents should look like, where it should be located, and the type of powers that it should have.

I can assure you that this committee will very eagerly await your suggestions.

I thank you very much.

We have received many statements relating to S. 1645. Without objection, these statements will be made part of the record at this juncture.

We have statements from Dean C. Jackson, President of the Navajo Community College; and from the Cheyenne River Sioux Tribe.

[The materials appear in the appendix.]

The CHAIRMAN. Our next panel consists of Enos J. Francisco, Jr., Chairman of Tohono O'odham Nation of Sells, Arizona; Rebecca Martgan; Director of the Navajo Division of Education, and Daniel Tso, Chairman, Committee on Education, Navajo Tribal Council; and Andy Joseph, Vice Chairman, Colville Confederated Tribes.

Welcome, ladies and gentlemen.

Our first witness is Chairman Francisco.

**STATEMENT OF ENOS J. FRANCISCO, JR., CHAIRMAN, TOHONO
O'ODHAM NATION, SELLS, AZ**

Mr. FRANCISCO. Thank you, Chairman Inouye.

My name is Enos J. Francisco, Jr. I am speaking to you of the Tohono O'odham Nation.

I want first to express the deep appreciation of the Tohono O'odham people for the work this committee and the staff has done in preparing the Indian Education Amendments. Your efforts lay the foundation for better Federal schools and a better future for Tohono O'odham children.

The complete version of my testimony is in the form of a prepared statement. Due to time limitations, I will present orally only portions of the statement.

The Chairman. All of your prepared statements will be made part of the record in their entirety.

Mr. FRANCISCO. Thank you, Senator.

Specifically, I will focus on the self-determination grant concept and the problem of adequate funding for Federal Indian schools.

On the Tohono O'odham Reservation, there are presently four Federal schools enrolling a total of approximately 1,052 students. All of the schools are operated directly by the BIA under the office of the Agency Superintendent for Education in the town of Sells, although since 1983, the official policy of the Nation has been to place the schools under a Public Law 93-638 contract system.

Santa Rosa Ranch School, Santa Rosa Boarding School, and San Simon School serve grades kindergarten through 8 and have approximate enrollments of 122, 358, and 320 respectively. The fourth school is the new Tohono O'odham High School which is adjacent to the San Simon elementary site and has a current enrollment of approximately 252.

These schools serve the most remote reaches of our reservation and lie generally outside the service area of the Tohono O'odham Nation's public school district. The school sites are separated from

each other and from the office of the Agency Superintendent for Education by an average distance of over 60 miles.

I want to make it clear that people are working hard in our BIA schools, and some important progress is being made.

However, the blunt reality is that there is no hope of having the effective school organizations that we are entitled to so long as the schools are administered directly by the BIA and their funding is held at current depressed levels. What it boils down to is that Assistant Secretary Swimmer was right last year when he said that the BIA bureaucracy and its restrictive rules and regulations prevent the schools from using effectively their resources.

It is for this reason that my office, following the Tohono O'odham Comprehensive Education Plan, supports strongly the self-determination grant proposal in S. 1645. We have to eliminate the Federal bureaucracy from our schools, and the self-determination grant will do this more appropriately than the Public Law 93-638 contract system.

I am concerned, however, that in its present form, the self-determination grant proposal will not enable the Tohono O'odham to implement a school organization concept which we have developed over the last two years and for which we now seem to have consensus in tribal government. I am referring to the concept of a unified tribal school system in which the four Tohono O'odham school sites and the office of the Agency Superintendent for Education are funded under a contract or grant arrangement.

An organizational chart that shows the outline of the idea is included with this testimony as an exhibit. I will be referring to the chart in the rest of my remarks.

As shown in the chart, the framework we have in mind follows closely the pattern of the State public school system. In the State system, regulation of the schools is accomplished by the State legislative process operating through the Arizona Department of Education, and operation of the schools is carried out by locally controlled, independent schools districts.

Our proposed framework maintains this distinction by giving regulatory responsibility to tribal government while assigning the role of operating the four school sites to a non-profit school corporation.

In our thinking, regulation involves establishing general policies and standards and enforcing them in the schools system. Implicit in this concept is the notion that the proper role of tribal government is to stimulate school improvement and provide accountability.

Examples of tribal regulatory functions include a tribal accreditation system, criteria for financial management, and personnel evaluation and compensation systems, general curriculum and instructional program standards, and rules for the open conduct of school board meetings.

Operation means all activities necessary for the day to day functioning of the schools. Hiring, staff performance evaluations, curriculum development, accounting, and purchasing are examples.

The unified tribal school system accomplishes a number of important objectives for the Tohono O'odham.

First, it places responsibility for setting school standards and enforcing them in the tribal government. For us, any other approach is unfaithful to the concept of Indian self-determination.

Second, it provides that school regulation and school operation will be carried out by separate entities. A fundamental problem in the existing Bureau operated system is that the same entity, led by the office of the Agency Superintendent for Education, is required to regulate and operate the schools at the same time. This is a prime cause for the stagnation and the unaccountability that we see now.

Third, placing responsibility for operating the school system in a non-profit corporation which is independent of tribal government will increase efficiency. The school corporation will be able to develop management and accounting expertise appropriate to its purpose and will be insulated from tribal political influences.

Finally, our framework implements the principle of school based management. Both our own experience and effective schools research show that the power to improve educational opportunity lies primarily with the members of the school building community, not with authorities—whether they be the central school administration or the tribal government—that are removed from the school site. Accordingly, our framework would establish at each school building a site council to govern the school in local matters.

As shown in the chart, one way to set up the unified tribal school system is to award to the nation a master contract or grant. The master contract or grant would thereafter be split into two parts.

The smaller part, by far, would be kept by the tribal government to support regulation of the schools. The larger part would be sub-contracted or granted to the corporation by the tribal government in order to operate the school sites and the central administrative office.

For the Tohono O'odham, this structure might, but need not, eventually evolve into an arrangement in which there are two separate contracts or grants, one for regulation running from the BIA to the tribal government and the other for operation running from the BIA to the school corporation.

My basic concern with the proposed Indian education amendments is that they do not clearly authorize the unified tribal school system I have described. The BIA has already taken the position that with respect to the existing 638 contracting option, the tribal school system we envision is not allowable. We need to eliminate any doubt in this area both with regard to the self-determination grant legislation and the pending amendments to Public Law 93-638.

Specifically, I ask the committee to consider making it clear in statute that for either the self-determination grant or the Public Law 93-638 contract that:

1. It is allowable to assign regulation of the schools to tribal government while assigning operation of all school sites and a central administrative office for education;
2. It is allowable to include the whole of the office of the Agency Superintendent for Education; and
3. Indirect or administrative costs associated with both the tribal regulatory function and the agency education function will be cal-

culated at a realistic level and may be allocated respectively to the tribal government and the operating corporation.

There is great promise in the education amendment we are considering today, but that promise will be false unless something is done to deal with the problem of inadequate funding for the Federal school system. A comparison with the public school system that serves the eastern half of the Tohono O'odham Nation will show just how big the funding problem is.

The gross salary for a starting teacher in our BIA system at \$15,473 is \$4327 less than for a starting teacher in our public school district which is \$19,800. The situation doesn't get any better for educators that stay in the system.

A teacher at the top end of the BIA salary schedule at \$24,064 makes \$8286 less than a top end public school teacher at \$32,350. The difference in the salaries offered school administrative personnel are proportionately as large as for teachers, and there are differences of the same magnitude in the capital funds that are available in the two systems.

That is the extent of my oral testimony, Mr. Chairman.

[Prepared statement of Mr. Francisco appears in the appendix.]

The CHAIRMAN. Ms. Rebecca Martgan, we would be pleased to hear from you now.

STATEMENT OF REBECCA MARTGAN, DIRECTOR, NAVAJO DIVISION OF EDUCATION, WINDOW ROCK, AZ

Ms. MARTGAN. Thank you, Mr. Chairman. Let me thank you and commend both Senator DeConcini and the Senate Select Committee on Indian Affairs for the excellent effort to improve Indian education.

Thank you, Senator Inouye, for allowing me to come before you today. I would like to highlight the prepared statement submitted by the Navajo Nation.

We have analyzed and developed specific recommendations regarding S. 1645 and H.R. 5.

We recommend that the language of H.R. 5 regarding the reservation of funds under title IV and part B for development and improvement of tribal departments of education be incorporated into S. 1645. We make this recommendation in order to provide resources to tribal governments to research, plan, and enhance their assumption of the role of the tribal education agency.

We do not recommend incorporating language from H.R. 5 which would make determination of eligibility for title IV part A funding dependent on the decision of the parent committee and LEA agency alone.

We continue to be concerned with association of scarce Indian education dollars to eligibility criteria with no standards. Many students in our public school need special services, and their needs should be appropriately addressed.

We recommend title IV part A funds be available to all publicly funded schools serving Indian students, including BIA schools.

We support the language in S. 1645 creating a special program for gifted and talented Indian students funded through Title IV.

We support the provision of S. 1645 regarding authorized expenditures and funding authorization for our Navajo Community College. Restrictions on expenditures for Navajo Community College facilities has led to continued deterioration of two main NCC campuses.

We support incorporation of the Native American Indian Schools Act from H.F. 5 into S. 1656. This legislation provides an avenue for innovation by Indian tribes.

We also support incorporation of the specific provisions in part E of H.R. 5 for Native Hawaiian education programs. We are pleased to see distinctive programs being proposed for the Native Hawaiian population coupled with specific funding authorizations and appropriations.

Finally, we are recommending the specific inclusion of language in S. 1645 supporting the proposed alternative school at the BIA training facility in Continental Divide, New Mexico. This project which has the full support of all key elements within the Navajo tribal government has languished on the desk of the Assistant Secretary of Interior for over five years, and the project is desperately needed.

A recent survey in Chinle Agency in the Navajo Nation conducted under the direction of the Office of Indian Education indicated an alarming dropout rate for high school students in that agency. An estimated 55 percent of the Navajo youth between the ages of 14 and 18 are reported to be out of school and without a high school diploma.

The Continental Divide alternative high school clearly could not address the needs of the entire dropout population. It is, however, an important part of the total effort which needs to be made to reach these young people.

We seek specific language requiring the BIA to renew its lease with the U.S. forest Service.

Again, we thank the Senate Select Committee on Indian Affairs for its continued support for quality education under the control and guidance of Indian tribes and Indian people. We hope that the recommendations made in connection with this testimony will be utilized to strengthen S. 1645 as a vehicle for meaningful education.

The CHAIRMAN. Thank you very much.
Our next witness is Mr. Daniel Tso.

STATEMENT OF DANIEL TSO, CHAIRMAN, COMMITTEE ON EDUCATION, NAVAJO TRIBAL COUNCIL, WINDOW ROCK, AZ. ACCOMPANIED BY ROSEMARY BLANCHARD, ADMINISTRATIVE SERVICES OFFICER, NAVAJO DIVISION OF EDUCATION

Mr. Tso. Thank you, Mr. Chairman and the select committee staff.

Mr. Chairman, brother, you have come to the Navajo Reservation before. You have seen our type of government in action. Just to give you a background of my experience as I became the education committee chairman in January of this year.

As soon as the committee came into formal action, we were faced with the Ross Swimmer proposal. As such, we have two resolutions,

one from December 1986 and one from January 1987, opposing the proposed transfers.

Subsequent to that, the tribal council directed the education committee to study the initiatives and to study the alternatives. As a result of this, the education committee held hearings on the Ross Swimmer initiatives. We hosted these hearings, and we had hoped that Mr. Ross Swimmer would appear personally. However, at each agency where the hearings were held, all we saw was a video tape.

One of the key things that our respected elders really thought was impersonal was why do we have to consult with a video tape. Why can't Mr. Ross Swimmer come before us? That way we can have meaningful consultation with Mr. Swimmer.

As a result, the majority of the Navajo people opposed Mr. Swimmer's initiatives in regard to Indian education. I think that one of the main underlying elements was trust responsibility has to be in place. The Bureau has to carry out those trust responsibilities.

The other thing that we also learned in hearing our elders is that, sure, the Treaty of 1868 was signed almost 119 years ago, but in several areas of the reservation, the Bureau did not start establishing an Indian education system until 1934.

So, we have a time lag of some 50 years where the education needs of the Navajo children were not being met. Instead, they were given to the mission schools or other church schools.

As a result, we see that there is a time lag to when the Treaty of 1868 was implemented. As a result, I personally feel that is a reason for the low quality education.

Along with that, being the chairman of the education committee and as a result of the development of H.R. 5 and S. 1645, we found that we do have two types of schools operating under two public laws, the Bureau funded schools operating under Public Law 95-561 and the tribally controlled schools, the contract schools, operating under Public Law 93-638.

As a result, both were competing, at the same time, as brothers and sisters sometimes do, attacking one or the other. Let me inform you, Mr. Chairman, that the education committee of the Navajo Tribal Council brought these two organizations together to come up with this common Navajo Nation position on S. 1645 and H.R. 5. In fact, we put these two particular pieces of legislation side by side and consulted with each. We wanted answers and not just to throw a nut into the machinery. We wanted answers as to where there were problems that either side had with a particular section of this legislation.

We have proposed alternative language that we would like to see put in place of certain sections, and one of them is in new school starts and program expansions. One is in the area of administrative cost formula, and the other is in regard to consultation in regard to closures or other actions that would reduce the amount of programs available to Indian students, Navajo students.

We have presented testimony, a section by section commentary on S. 1645, and where we feel there needs to be alternative language to strengthen the bill, we have appendices. I would like for the staff to note that. I think that the way we put it together if they are taken out of context, then it would not have the meaning that we would want it to have.

One of the main things, I think, that I would really like to stress here is what the Navajo Nation is proposing is more tribal authority and more tribal oversight on Bureau funded schools and contract schools. We do want this particular committee to address these issues, because on one side of this brother-sister relationship, we see the Bureau funded schools—who holds them accountable? We see the whole system saying yes, we are accountable. On the other side, they are throwing sticks and stones to the other and saying they are not accountable.

However, from our perspective, the Navajo tribal perspective is let's hold both groups accountable. That is one of the things that we would really like to see.

This particular committee of the Tribal Council sees ourselves taking our own educational system and making it relevant to our children, giving appropriate cultural education to make our children viable citizens of the United States.

As I said, I cannot really express fully how I feel about this particular legislation. We have gone over it several times. I think other tribes are talking the same language in regard to our tribal oversight as far as accountability is concerned and also in regard to what we regard as satisfactory performance in the grants portion of the legislation.

I do appreciate the time that you have given us, Mr. Chairman, and I do feel honored to speak before you, and I do hope that you do come back to the reservation to visit your brothers and sisters.

Thank you.

The CHAIRMAN. Some day soon, I hope to be there again.

[Prepared statement of the Navajo Nation appears in the appendix.]

The CHAIRMAN. Our next witness is Vice Chairman Joseph of the Colville Confederated Tribes.

STATEMENT OF ANDREW C. JOSEPH, VICE CHAIRMAN, COLVILLE BUSINESS COUNCIL, COLVILLE CONFEDERATED TRIBES, NE-SPELEM, WA

Mr. JOSEPH. Thank you. It is an honor to be here to testify on behalf of the Colville Confederated Tribes.

I personally have served on the tribal council since 1969. This is my first year in education, but I have been involved through the years in teaching school teachers how to understand the three cultures of the Colville Confederated Tribes and to better understand our students.

I feel we have been very successful in the education of our Indian students on the Colville Reservation. We have had about, at one time, 93 percent of our students graduating from high school. Since unemployment has come about in the last 6 or 7 years, that has dropped quite a bit. We are probably graduating maybe 70 percent of our students at this time.

We have had a lot of students graduate from college, but we have also had a lot of dropouts, and we are 50 percent unemployed on the Colville Reservation at this time.

Our testimony here that is in writing is to support the other tribes and organizations through Indian country. We would like

the committee to give serious consideration to adding provisions in this bill to elevate the Indian education programs to a level within the Department commensurate with the responsibilities. This would ensure the administration carries out its trust responsibilities to the Indian people and fulfills Congressional policy.

Currently, Indian education programs are under the Office of the Assistant Secretary of Elementary and Secondary Education. In 6 of the 8 years, it has been under the OESE, that program has had no permanent director.

This has meant no program policy definition for Indian education and brings into question how closely attuned to Indian education needs the Department can be.

Lacking direction and policy, priority to Indian education is viewed as quite low. Education specialists and administrators for this area are among the lowest paid in the Department.

Morale suffers and recruitment of capable managers and specialists cannot go forward. Frequently, staff and administrators from within the Department then have to handle Indian education, and they have little familiarity with Indian education program needs.

Restoration of the Office of Indian Education Programs to the level of Assistant Secretary that other programs receive would enable the Department to represent the education needs of Indians nationally and would attract highly trained, qualified, and motivated Indian people to administer the programs.

We hope the committee will give serious consideration to this recommendation. The reorganization which took place several years ago, creating these problems, took place over the opposition of the Indian people.

That is our brief testimony, and I thank you.

[Prepared statement of Mr. Joseph appears in the appendix.]

The CHAIRMAN. I thank you very much.

I am certainly aware that this bill was drafted keeping in mind recommendations submitted by the Indian leadership. We worked primarily with the officials of the National Indian School Board Association, National Indian Adult Education Association, National Advisory Council on Indian Education, and the Association of Community Tribal Schools.

All of your recommendations will be very seriously considered. This bill is in response a desire on the part of this committee to seek answers from Indian people.

I would like to make an observation before proceeding.

Throughout my journeys and my meetings with Indian leaders, the name of Ross Swimmer comes up quite often. In some quarters, he is attacked mercilessly.

I would like to say that I have had several meetings with Secretary Swimmer. There is no question as to his good will and his intentions. I am certain that he has in his heart the welfare of the Indian people. We may differ in our approaches; we may differ in our solutions. However, I think for the time being, as long as the only thing we have going for us is the Bureau of Indian Affairs, it would be to our mutual benefit if we carry on our relationship with the Assistant Secretary in a bit more civilized manner.

I don't think it pays off to use harsh words.

So, with that, what are your thoughts on the convening of a White House conference on Indian education as suggested by some of the panel members that appeared before you? Do you have any thoughts on that?

Mr. FRANCISCO. I think it might be a good idea, Senator. I think that you would probably have a convention like this as a stage for all the education leaders throughout the country from Indian country would be there. I think we could get a lot done.

I think that from other White House conferences that were held in the past, there have been great advantages thereafter.

The CHAIRMAN. As some of you know, the committee is currently in the process of resolving this indirect cost dilemma that we are presently facing. By the end of this day, we should have an amendment to the Interior bill that will provide the necessary funds for this present fiscal year and, hopefully, for the next, but that doesn't resolve the problem, because something a bit more basic should be done so that we will not be confronted with this indirect cost problem each year. That is one of the reasons for S. 1645.

Second, I have met with Indian youth and many of them have given me the same sad story: why should I study? There are no jobs waiting for me.

The Senate is presently discussing an amendment that we hope will provide special incentives for businesses to locate themselves in the reservations. It will be an incentive program not available to any other minority group. I think we can work out something there.

So, this committee is not only involved in rhetoric, but we are trying to do something about the problems you have brought to us.

What are your thoughts on the establishment of a separate board of education for Indians?

Mr. Tso. Mr. Chairman, initially when we were given this proposal, we opposed it. We opposed it based on the thought that it would just mean another layer of bureaucracy. However, in listening to the presentation that you gave the previous panel and with some other thoughts, we would welcome the development of a dialog to establish a study for that and to talk about the establishment of a separate board.

Basically, we weren't given the examples of the SEC or FDIC as models. When we are given those as examples, then we do open our minds to developing a communication with other tribes and with this particular committee.

The CHAIRMAN. I can assure you that this committee will not force any solution upon you. We will confer with you, naturally, and get your input before we take any further steps, but I just wanted your thoughts at this moment whether we should proceed with a study on the feasibility or advisability of the establishment of a separate school board or board of regents or whatever it may be called, not as another bureaucratic obstacle, but as something with teeth and power.

I presume Vice Chairman Joseph wants to say something.

Mr. JOSEPH. I believe a board of regents would be excellent, especially if we were able to train the people in the Department dealing with Indian education to the sensitive needs of the reservation, for instance, on Indian preference.

Some of the testimony this morning made me feel kind of bad where they felt, why should you have Indian preference when some people can do just as well? That is very true, but Indian people have a very sensitive feeling toward each other and understand the different cultures and the different traditions. It could very well be beneficial to the whole Nation.

I think it would be good to have a board.

Ms. MARTGAN. I think this should be looked at very carefully to make sure that it does not usurp the tribal authority.

The CHAIRMAN. Is the present educational system succeeding in encouraging Indian young men and women to take up a career of teaching, and return to their reservations to teach?

Ms. MARTGAN. I think presently, with the salary and the types of personnel management and manuals that the Bureau has, many of your young people are not looking at being teachers on the Navajo Reservations.

The CHAIRMAN. They are not returning?

Ms. MARTGAN. Well, not too many of them, and the other thing is that many of our young people that do go to college, let's say, we send four students to college, and only one graduates, and that one may come back and may not because of the conditions on the reservation.

The CHAIRMAN. Is that the situation in your area?

Mr. JOSEPH. We have graduated a number of school teachers, but because of the lack of salaries, they have chosen to work in the Federal Government system. We have a few that have come back to the reservation and are teaching and are very successful and very great role models. We have some pretty good coaches.

I think because the salaries aren't high enough that they tend to take other jobs.

Mr. FRANCISCO. Mr. Chairman, as of the Tohono O'odham Nation, I think that until a short time ago, they weren't being encouraged. I don't think it was being mentioned to our young people that perhaps that could or should be teachers.

However, as recently as 2 years ago, we have had two programs to encourage some of our teachers aides in the present system to become teachers. Right now, we have four teachers which is about a 200-percent increase in what we have had in the last 10 years. We hope that by this method and also by encouragement to the younger people that we will get more teachers, but, of course, they will have to have the salaries to go along with it, and that is one of the things that I mentioned in my testimony.

The salaries have to be comparable to the salaries that are in the public school system. Otherwise, they will go to the public school system. and, yet, most systems are on the Tohono O'odham Nation.

The CHAIRMAN. One of the provisions of this bill, as you are aware, calls for comparability. That is based upon recommendations made by the Indian leadership.

Do you have any further statements you would like to make?

Mr. Tso. Mr. Chairman, thank you for the additional opportunity to address you.

In regard to our children returning to teaching, I just would like to add that a lot of the students have come back to teach, but then

also they have upgraded themselves to also become administrators such as principals and superintendents. So, we do have some very excellent examples of what has been produced on the reservation.

However, we do have again the high dropout rate. That is the apparent, just as in my particular home school. The majority of the children are open to what occurs on the outside of the reservation, and they see it on television and they think that is the thing to do. As a result, we have encountered a high degree of alcohol and drug usage.

As a result, rather than the schools dealing with those particular problems, they just kick them out, suspend them, whatever the term may be, but just stay away from school until you recover or you know how to deal with your problem and then you can come back.

However, at that time, they will not. The system isn't interested in me; I will go somewhere else.

I think basically what this committee is supporting in the drug and alcohol abuse prevention programs I really must commend both for their support and for their follow-through to make sure that we do have the money to implement programs that would address this particular problem.

I appreciate the time.

The CHAIRMAN. Well, before we go into recess, I would like to caution you that although this committee has been very active in the last 9 months, we are not miracle workers. However, I can assure you we work hard.

A bit of the history of this committee might indicate to you some of the problems we face.

This committee is not one of those that Members seek membership in. It is not one of the favorite committees. It is smallest in size, has the smallest budget, and also, up until recently, was the depository of second-hand furniture and second-hand equipment.

We now have new computers for the first time, new furnishings. This was the only committee without a hearing room, but this hearing room is the Indian Affairs Committee's hearing room. This belongs to the Indian Affairs Committee now.

This was the only committee without a hearing room. As a result, if you have testified in the past, you may have testified in several different hearing rooms.

In fact, we went to the Indian community to seek leadership on the staff. We have 26 staff members, and 20 are Indians for the first time in our history. For the first time, there is an Indian who is the staff director, a great-great-grandson of Sitting Bull. The chief legal counsel is a Navajo. The staff director is a Chippewa-Cree. Most of the professional staff are Indians.

So, times have changed, and we hope to continue as an action committee, but please bear in mind that we are not miracle workers.

This bill is given high priority, and during this Congress, it will be on the floor of the Senate. That I promise you.

With that, we will stand in recess until 2 p.m.

[Recess taken.]

The CHAIRMAN. Our final panel consists of Mr. Roger Wilson, Vice President, and Mr. Donald Denetdeal, staff, Navajo Area

School Board Association; and Ms. Lorena Bahe, Executive Director, Association of Navajo Community Controlled School Boards.

We welcome you.

Mr. Wilson, you may proceed.

STATEMENT OF ROGER WILSON, VICE PRESIDENT, NAVAJO AREA SCHOOL BOARD ASSOCIATION, WINDOW ROCK, AZ, ACCOMMODATED BY DONALD DENETDEAL, STAFF, NAVAJO AREA SCHOOL BOARD ASSOCIATION

Mr. WILSON. Thank you, Honorable Chairman Inouye.

I am Roger Wilson. I am the Vice President of the Navajo Area School Board Association.

I certainly wish to thank the Senate Select Committee on Indian Affairs for providing us a public hearing on this important piece of proposed legislation.

It is with law-making the way it is with many other things: haste does make waste.

We have been through a rather grueling experience with the bill, being very critical of its many provisions and being severely criticized for being critical of it. We have viewed it as most important for the Navajo Tribe to take a strong and very well considered position on the legislation which we frankly did not believe to be well thought out and balanced.

We believe that this has now occurred, and the Navajo tribal position is one of support.

The BIA educational system operates over one-third of its total schools, including more than one-half of them Bureau operated schools in the Navajo Nation. We hope that the new bill can be developed which will be more positive in its tone and constructive in its policy direction.

The tribe, the bill, the school board, and the Congress are in this thing together. It is our job to make this system work.

We believe that the Federal responsibility for education involves the responsibility for ensuring a quality education. We believe that tribes can become full partners in this endeavor but that tribal authority must go hand in hand with tribal responsibility.

The BIA system must develop a high degree of credibility and that can come only from demonstrated results of schools being held accountable. We believe the accountability factors in H.R. 5 to be weak and unworkable.

The Navajo position would strengthen accountability at least in those locations where tribes have agreed to take a more substantial role in accountability functions. We do not wish to see Federal trust responsibility for education abrogated in the name of self-determination any more than we want it abrogated in the name of State responsibility.

We want to emphasize two points which are included in the tribal testimony but not included in H.R. 5 or S. 1645.

The first of these is the provision making the BIA program eligible for entitlement funding under the title IV part A. All other publicly funded schools, including the contract schools, are entitled to this funding, and we strongly urge inclusion of the new provision in S. 1645 to do this.

Second, we wish to draw your attention to the section which would put wage grade school employees under Public Law 95-561 contract educator system and provide for a more reasonable method of establishing their pay scale.

We strongly request that you carefully consider the positive changes in the tribe's position and very carefully consider the long-term effects of the entire legislation.

Thank you.

[Prepared statement of Mr. Wilson appears in the appendix.]

The CHAIRMAN. I thank you very much.

There is one sentence in your statement that concerns me a little, and that is the second paragraph in which you say that you have been very critical of many of its provisions, and you have been severely criticized for being critical of it.

You are not suggesting that this committee has been criticizing you?

Mr. WILSON. No, no, Mr. Chairman. I am talking about the other groups, the other organizations.

The CHAIRMAN. Then, you should be concerned.

I thank you very much.

Does Mr. Denetdeal wish to testify?

Mr. DENETDEAL. No, thank you. I am just assisting Roger.

The CHAIRMAN. Then we will hear from Ms. Bahe, please.

STATEMENT OF LORENA BAHE, EXECUTIVE DIRECTOR, ASSOCIATION OF NAVAJO COMMUNITY CONTROLLED SCHOOL BOARDS, WINDOW ROCK, AZ

Ms. BAHE. Thank you, Chairman Inouye.

I am Lorena Bahe, the Executive Director for the association of Navajo contract schools. I have been recently appointed director, so I am new to this whole scene, but I am not new to Indian education. I have been teaching in the public school system for 7 years.

The Association of Navajo Community Controlled School Boards is vitally interested in this legislation. We represent 11 contract schools in the Navajo area with a combined enrollment of approximately 2600 Navajo children in kindergarten through 12th grade.

H.R. 5 and S. 1645 both address many of the critical issues which our member schools face continually in trying to carry out the provisions of Public Law 93-638.

First of all, we wish to express our support and appreciation for the Navajo Nation's position on this legislation. It was arrived at through 5 full days of intensive hearings and negotiation between representatives of both contract schools and the Bureau of Indian Affairs operated schools and the Navajo Tribal Council's Education Committee and administrative staff of the Navajo Division of Education.

So, we feel, in supporting this legislation, this legislation represents a genuine consensus of all the informed opinion and tribal governmental concern.

In keeping with this tribal position, I am here to offer one major recommendation, and that is to section 106 of S. 1645 regarding the administrative cost formula.

We strong urge the Senate to incorporate a legislated administrative cost formula of similar nature to that which is proposed in H.R. 5 instead of again calling upon the Bureau of Indian Affairs to develop one by regulation. The Bureau of Indian Affairs, to our knowledge, has had nine years since passing Public Law 95-561 to incorporate an overhead cost of contracted education functions in a formula, and the BIA has not proposed any solution to this problem.

In short, we question whether the Bureau of Indian Affairs is either competent to develop an equitable formula or trustworthy to do so without any hidden agenda. Instead, we are herewith submitting a minor variation of the administrative cost formula already proposed this morning. It was mentioned by the Association of Community Tribal Schools for your consideration.

This administrative cost formula is different from section 8107 of H.R. 5 in several regards. On page 2 of our testimony, we have listed four ways in which this formula is different:

(a) The language describing the formula has been simplified by incorporating labels with clear operational definitions in place of other subsections of the bill.

(b) It substitutes a fixed dollar amount for the floating average of direct cost funding introduced by H.R. 5 into section 1128(c)(2)(A)(iii). The use of an average appears to be subject to too much variation which is unrelated to actual costs of administration for on-going contractors.

(c) It incorporates provisions for unbiased research and recommendations to the oversight committees establishing formula values based on costs of delivering services in the field.

(d) It establishes a three-year phase-in provision which limits the impact of provisional values on both contractors and overall costs until the necessary research can be done to verify or change them.

This formula is also different from the Association of Community Tribal Schools' proposal as follows:

(a) It contains a broad statement of purpose of paying such administrative costs.

(b) It eliminates the use of current ISEP formula as a means of paying administrative costs in response to the Bureau of Indian Affairs fears that such a procedure would result in reducing their program funding in order to pay for contract schools' administrative costs.

(c) It is based on calculations on a direct cost base in the second previous year instead of the immediate previous year which is also in response to the BIA's assertions that immediate previous year data cannot be accumulated in time for use in such calculations.

(d) It exempts certain costs from the direct cost base.

(e) It allows tribal organizations for which elementary and secondary education programs are less than half of which is operated under self-determination agreements.

With these provisions, we were assured by representatives of the Bureau of Indian Affairs schools in the Navajo area that any objections that they might have had to the H.R. 5 version of the formula had been overcome. We think such a formula is badly needed, and we urge the Senate to consider this as an effective compromise version. It may not be an ideal formulation, but we believe it is equitable.

ble, verifiable, and a useful tool to eliminate many of the problems in the present non-system.

Thank you.

[Prepared statement of Ms. Bahe appears in the appendix.]

The CHAIRMAN. Thank you very much, Ms. Bahe.

I would like to assure you that the formula that you have proposed is not only under serious consideration. Very likely, you will see it in print when we mark up this measure.

Even if the Senate does carry out your suggestions, we still have to go into a conference with the House, and they have their thoughts on what should be or should not be in this measure. So, we are still some time away from final enactment.

We also have to keep in mind the "threat" of the BIA that if this measure is passed in the present form, they will recommend a veto, but that should not dissuade us from doing the right thing. If we are doing the right thing and the President hopes to veto it, fine. We will do our best to override the veto. That is the nature of our business here.

Do you have any thoughts on the question that I have asked others on the establishment of a separate organization with adequate powers to formulate educational policy like a school board or board of trustees or board of regents, whatever you wish to call it?

Mr. WILSON. I know the organization of Navajo Area School Board Association has discussed that concept. Perhaps it might be considered giving it to NACIE, the council on education that the President appoints, because we felt that some of the responsibilities were not very clear as to what they were doing, but we just made it as a suggestion that they might consider something like that to be one of their functions.

I think it needs to be explored as to what group might be able to be held responsible for that concept.

The CHAIRMAN. What are your thoughts on the White House conference.

Mr. WILSON. Really, we don't have too much on it as to what the purpose would be. I don't want to comment on that, because—

The Chairman. Well, we don't have the details ourselves, but I gather that this conference will be a convocation of men and women throughout this land who are interested in and involved in Indian education, convening to discuss problems and solutions.

Mr. WILSON. Well, my thinking is that we already have some organizations that are existing and dealing specifically with that like the National Indian Education Association and the other associations like the National Congress of American Indians. Each one of them has a component on education.

So, I am really not sure why we need another big convention.

The Chairman. Well, I am just asking you, although, as a general rule, a White House conference gets higher visibility than others.

Mr. WILSON. Yes, that is true.

The CHAIRMAN. If you don't want visibility, that is your business.

Mr. WILSON. Well, I think it has to be well thought out to see what we would have to be dealing with.

Ms. BAHE. Mr. Chairman, I would like to comment on those two questions, if I may.

The Chairman. Certainly, please do.

Ms. BAHE. The association of Navajo contract schools had discussed—I think I have seen two different versions or two different proposals on establishing an Indian education board, and one that we had supported was the proposed national Indian education board. We had passed a resolution in support of that.

There was also another one that was proposed, a national commission, I think, on school review that we had seen, and we had discussed that at length. The board had opposed the national commission on Indian school board review.

I think from listening to the board members who are elderly Navajos and Navajos who have been board members for a number of years that they are really concerned from the national level the work and the effort that is done on Indian education, and they would like to see a group that we can identify with, a group that we can work with from the local level. So, the board had discussed this, and we are in support of that type of an operation or program.

On the White House conference on Indian education, I think there is a need for such a conference. You have stated this morning that you do have more Indian people here working with the committee, staff people working with the committee, and I think we need to all get together and show the nation that Indian education is important and that Indian education should be addressed through these appropriations and legislation. Because of that, I think, as you said, visibility is very important, and I agree with you.

The CHAIRMAN. This committee will convene on October 14, to mark up this measure. Hopefully, we will come out with a measure that can be successfully passed in the Senate and passed on to the House.

Therefore, if you have any additional ideas that you would like to present to us, please feel free to submit them.

So, I thank you all very much for traveling long distances to be with us to share your wisdom and your expertise. Your thoughts are all very important to us.

The committee will stand in recess.

[Whereupon, at 2:40 p.m., the committee recessed.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT**OF****SENATOR DENNIS DeCONCINI****1987 Indian Education Amendments**

Thank you, Mr. Chairman for scheduling this hearing on S. 1645, the Indian Education Amendments. I want to welcome all the witnesses who are here today to present their comments on this bill. S. 1645 proposes to reauthorize the Indian education programs administered by the Bureau of Indian Affairs and the Department of Education. These programs serve the approximate 360,000 Native American students attending BIA, public or tribally contracted schools.

Both the reservation and urban Indian communities rely on these vital programs to educate their children from kindergarten through high school. Parents and leaders of these communities place the highest priority on education. Education is critical to their efforts to achieve economic self-sufficiency. Like many other Americans, they want a better world for their children and look to a strong education system as the best way to achieve this end. They want quality education for their children and many

have committed themselves to the task of improving Indian education as members of local school boards, parent committees and tribal councils. Many others have become teachers and school administrators and devoted themselves to serving in the reservation school systems. This considerable investment in education must not be overlooked. Instead, I believe that it is time for the federal government to meet the Indian tribes and its communities halfway and it can do so by strengthening its commitment to Indian education.

The federal government, under the federal trust relationship, has a special duty to the Indian tribes to assure the availability of the best educational opportunities possible. This duty must be fulfilled by our government in a manner consistent with the Indian self-determination policy. The bill before us today is designed to strengthen the federal-tribal partnership as it relates to Indian education. The bill seeks to improve the administration of Indian education programs by refining the existing law and proposing new options for Indian communities to use in their pursuit of excellence in education. I know these proposals have generated considerable interest in the Indian community.

Much of the testimony today will focus on the ways in which the bill can be improved. The Committee will use the input received here to prepare a substitute bill which we will consider for mark-up Friday of this week. Our plans are to have a bill reported by next week so it can be made a part of the larger elementary-secondary education bill to be considered by the full Senate.

STATEMENT OF SENATOR JEFF BINGAMAM
 SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
 REPORT OF FINDINGS: JOINT ECONOMIC COMMITTEE HEARING

TRANSFER OF ADMINISTRATIVE CONTROL OF BUREAU OF INDIAN
 AFFAIRS SCHOOLS
 SEPTEMBER 29, 1987

Mr. Chairman, first let me take this opportunity to commend both Senator DeConcini and the Senate Select Committee on Indian Affairs for their excellent efforts to improve the state of Indian education. The depth with which the Committee has addressed -- and continues to explore -- the needs of both tribally-controlled and Bureau of Indian Affairs schools is to be applauded.

Thank you for allowing me to come before you today to report the findings of the field hearing I chaired earlier this month in Santa Fe, New Mexico under the auspices of the Joint Economic Committee. I am particularly grateful to you, Mr. Chairman, for attending the hearing and providing us with your valuable insight and comments.

As you know, the hearing was held to hear the concerns of tribal officials, educators and community people regarding the Bureau of Indian Affairs' proposal to transfer Bureau-operated schools to the control of tribes or state governments. I'm happy to report that the hearing was well attended and very informative. I will briefly summarize the scope of the testimony. I request that my full statement be included in the record.

I believe the field hearing was especially beneficial because Indian education, like the educational system of all Americans, is at a critical juncture. We are faced with increased dropout rates, higher incidences of illiteracy, teacher shortages, severe budget cuts and more. We have reached a situation where American students as a whole -- and Indian students in particular -- score below those of students from other industrialized nations on standardized tests.

These trends warrant the careful examination of our educational system in and of themselves. But other problems associated with Indian education warrant particular examination given the trust relationship between the federal

government and Indian tribes and the responsibility mandated by Congress for the Bureau of Indian Affairs to operate certain schools for the benefit of Indian children.

It was out of respect for this responsibility -- and the Bureau's proposal to transfer operation of its schools to tribes and state governments without consulting those directly effected by the transfer -- that the field hearing was held.

Those who testified at the hearing focused on three key concerns:

(1) The need to respect the principles of Indian self determination and the government-to-government policies that have guided our relationship with Indian tribes for many years.

(2) The need to avoid attempts to solve the complex problems facing Indian education with simple and temporary solutions.

(3) The failure of the Bureau to follow the mandate of Congress and address the dismal state of the educational systems under its control.

First let me turn to the principles of Indian self determination. Make no mistake, the Indian tribal leaders and educators who spoke at the hearing are not opposed to the Bureau's policy of "Indian control of Indian affairs in all matters relating to education." They realize and eloquently articulated the belief that tribal and local input and control is essential to the development of sound educational policies, curricula, and cultural development. They advocated and applauded the efforts by some tribes to assume responsibility for the destiny of their children through assumption of control of their children's schools.

However, they point out that the Bureau's transfer proposal actually negates Indian control and runs counter to self determination. This is so because the Bureau would transfer control of its schools without first consulting the tribes and without involving them in the transfer process. If the tribes should refuse to accept the transfer, the Bureau would contract to transfer school operation to the state or local government. As Herman Agoyo, the Chairman of the All Indian Pueblo Council which represents the 19 Pueblos in the State of New Mexico, said, "Any decision regarding the transfer of educational responsibilities cannot be unilateral and without prior consultation and concurrence of the Indian tribes ... Such a unilateral decision would violate the "trust" and "fiduciary responsibilities that the BIA has to Indian tribes."

Indeed, the language of Public Law 93-638, which gives the Bureau the authority to contract with tribes, requires it "to contract any portion of the BIA education program to the

Indian tribes it serves if the Tribes so request," not if the Bureau so requests. The tribal leaders expressed the belief that the language "if the Tribes so request" means that they must be consulted before any transfers take place.

Those who testified at the hearing also voiced the concern that the Bureau's proposal was but a poor and simple solution to a much more complex problem -- that of the poor state of Indian education generally.

A number of times we heard that the Bureau's focus, the States' focus and the tribes' focus should collectively be on the QUALITY of education: That each Indian child should have an equal opportunity to succeed in his or her educational achievement, free from the constraints of administrative squabbles..

A number of suggestions were made:

1. The Bureau, rather than distancing itself from the problems facing Indian children, should join with Indian tribes, state and local governments, and local community and parent organizations in a concerted effort to improve the various existing educational programs. Improvements and progress can be made only through working together cooperatively to analyze and discuss the education systems that serve the children. As Alan Morgan, Superintendent of Public Instruction for the State of New Mexico said, "Quality education for Indian children will be achieved only as a result of a vigorous and constructive educational relationship amongst the federal government, the state, tribal governments, and local school districts. We urge Congress to ensure that the federal government maintain an active and productive role in this relationship and that the commitments of the federal government to Indian students be addressed with renewed vigor and optimism."

Specifically, suggestions such as the following were made:

1. Bureau school facilities and curricula should be examined, updated and improved:
 - (a) Focus must remain on existing programs. A comprehensive analysis of relevant financial and legal responsibilities should be made.
 - (b) Critical needs such as special education, drug and substance abuse and health care should be addressed in depth;
2. Successful school programs, whether federal, state or tribal must be identified and highlighted as exemplary programs for all to model;

3. A federal-state-tribal-local network for education improvement should be established, maintained, and monitored.

Finally, and most importantly, the Bureau's current practices and procedures were challenged during the hearing as they had been by this Congress earlier this summer.

Specifically, the Bureau was asked why it had never sent to Congress the studies mandated under Public Law 95-561, the Indian Education Amendments of 1978 and reaffirmed under the Supplemental Appropriations Act that became law on July 11, 1987. In these laws, the Congress required the Bureau to submit studies and surveys to establish and revise education standards for Bureau and contract schools. These laws also required that the Bureau submit an annual report to Congress on the "state of education" within the Bureau's education programs. As of the day of the hearing, more than six years after Congress' first mandate, we still had not received the studies.

The Bureau's spokesperson at the hearing, Mr. Ronal Eden, the Acting Deputy to the Assistant Secretary of Indian Affairs for the Department of Interior, assured us that the Bureau had finally gotten the message and that it would submit drafts of the studies to the appropriate Congressional committees within the next two months.

I believe these studies and the hearing testimony will provide a good baseline from which we can develop constructive ways to make real and lasting reform in this critical area. This is an issue that will not be solved quickly. The sentiments expressed at the hearing -- that a concerted effort must be made by all those parties involved in the education of our children -- must be cultivated if our educational system is to be improved.

Thank you for providing this opportunity for these findings to be discussed.

STATEMENT OF ROSS O. SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE SELECT COMMITTEE ON INDIANS, UNITED STATES SENATE, ON S. 1645 AND TITLE VIII OF H.R. 5, IN THE SENATE, BOTH ENTITLED "THE INDIAN EDUCATION AMENDMENTS OF 1987."

September 29, 1987

Good morning Mr. Chairman and members of the Committee. I am pleased to be here to discuss S. 1645, and Title VIII of H.R. 5, the "Indian Education Amendments of 1987."

We strongly oppose enactment of either S. 1645 or Title VIII of H.R. 5. Unless changes suggested in this testimony are made, the Department of the Interior would recommend that this legislation be vetoed by the President.

S. 1645 and Title VIII of H.R. 5 substantially amend Title XI of the Education Amendments of 1973, P.L. 95-561 (25 U.S.C. 2001 et seq.), including amendments which legislatively recognize each BIA funded school and essentially strip the Executive Branch of all discretionary authority for the operation of these schools. The amendments freeze existing regulations, require a tribal consultation process that does not allow for appropriate administrative planning without outside interference, prohibit the transfer of the management of BIA-operated schools to entities other than those determined by the Tribes, provides a new grant mechanism for funding the now contracted schools, establish a formula for determining the amount of administrative cost to be provided for schools that are funded but not operated by the BIA, and micro-manage the program with provisions to expand certain school programs, automatically triggering a post-differential pay authority for certain teachers, waiving dormitory standards, and requiring the implementation of BIA responsibilities under tribal cooperative agreements regardless of BIA concurrence.

Because of the number and complexity of the issues involved in these bills, I have attached to my prepared statement detailed comments on the issues or problems to which we recommend that the Committee give serious consideration. My testimony this morning will be on those areas that we believe create serious conflict with our ability to operate an education program for Indian students.

We strongly object to sections 8101 and 8105 in H.R. 5 and sections 102 and 105 in S. 1645. These amendments (1) provide statutory recognition and authorization for each BIA-funded school, (2) bar curtailment of a school without either express permission from Congress or a formal request from the tribal councils whose children are served by the school, and (3) freeze most of the BIA's current education regulations by enacting them into law by reference. We view these provisions as an unacceptable interference by the Congress in the administration of these education programs and we do not believe that such individual administrative decisions are appropriate for the legislative Branch to make. The freezing of current regulations would leave the BIA with no method of meeting the need for changes and improvements in the administration of its education programs. Further, this provision violates the distinction between law and regulations to implement laws by in effect requiring that little or nothing could be done administratively and that administrative actions be accomplished by the enactment of laws.

Part B of title VIII of H.R. 5 and Title II of S. 1645, headed "Self-Determination Grants", provide for an alternative system for tribes to assume the operation of BIA-funded schools. The intent is apparently to achieve less BIA interference in the operation of what are now called "contract schools". We agree with this goal but with modifications to the bill language to meet some concerns about the appropriate role of the BIA and the performance criteria to be used. In fact, we would like to see such a change for all BIA-contracted programs. We recommend that Congress consider

a major overhaul of the P.L. 93-638 contracting system and not just limit a new proposal to the education program.

Under this new grant provision in S. 1645 and H.R. 5, a school would apply for an initial grant and be required to meet certain standards and eligibility criteria. Once a grant is provided, a school would be required to submit annual reports but would not reapply annually. The grant would be extended automatically subject to availability of appropriations and satisfactory performance as defined in the bills as follows:

1. One of the following: a) accreditation (or candidacy status) by an accrediting agency as determined by the Secretary of Education; or b) accreditation by a tribal Division of Education; or c) compliance with the BIA standards as determined by an outside evaluator; or d) positive evaluation once every 3 years for performance compliance with standards that applied under a P.L. 93-638 contract prior to the enactment of this act (the evaluator to be agreed upon by the school and BIA, but, in the absence of an agreement, the tribal authority decides on an evaluator or does the evaluation); and

2. Submission of four reports that include a) an annual financial statement reporting revenue and expenditures as defined by the grantee's cost accounting system; b) a biannual financial audit in accordance with the Single Audit Act; c) an annual submission to the Secretary of the number of students served and a brief description of the program offered under the grant; and d) a program evaluation (based on the appropriate standards) to be done by an outside evaluator.

Under this proposal the role of the Secretary is simply to receive and approve applications and to receive (but not act on) the required reports. The Secretary has authority to issue regulations relating to the discharge of

duties assigned to the Secretary under this Title but in all other matters the Secretary may not issue regulations. However, the bills state that the Federal responsibility to provide the program does not change and the Secretary is required to accept a retrocession within 120 days of a tribe's request. In other words, tribes give all the direction but the Secretary continues to be accountable.

The amount provided to a school under the grant would include their calculated amount under the Indian Student Equalization Formula, the operation and maintenance amount, funds provided under other laws (Chapter I, etc.), and administrative costs as determined by the formula under this Act.

While we applaud the concepts of streamlining the administrative system and attempting to limit the Federal role in day-to-day operations of the schools, we do not believe that these grant provisions as written are workable. If the major role of the BIA is to only accept applications and reports from the Tribes and then funnel money to them, the Secretary cannot be expected to be accountable for the results. In effect, the grant recipients and the tribes involved would be carrying out the Federal responsibility without any substantive responsibility on the Executive Branch. This approach is unacceptable since congressional oversight alone cannot be an adequate substitute for Executive Branch responsibility and authority to assure there is accountability both for Federal funds and for the quality of service being provided.

We believe a better idea is to examine the current contracting procedures and develop a different mechanism that would allow more flexibility and less red tape. This grant proposal is a flawed step in that direction. There must be a credible evaluation procedure and the reports must not only be submitted to BIA personnel but should be reviewed, and if a determination is made that changes are needed these personnel must have the authority to require the

changes. We would not object to outside evaluators if a list of acceptable evaluators could be developed by the grantees and the BIA. Further, we would also require that standardized achievement tests be required at the beginning and end of each school year and that the results be included in the program report. We like the idea of the BIA playing more of an oversight role with our primary concern focusing on the results of the service offered rather than on the day-to-day operations and how each penny was spent. However, we cannot agree to the very limited role outlined in these bills. We must address the ultimate question of responsibility - does it belong to the tribes or to the BIA?

Section 107 of S. 1645 and section 8107 of Title VIII of H.R. 5 provide for the amount of administrative cost to be provided for BIA funded schools operated by a tribal organization. S. 1645 provides for either the actual amount needed or an amount determined under a formula prescribed by regulation. The administrative cost allowance under S. 1645 is defined as:

"the amount that a Bureau funded school (other than a Bureau school) is provided under subsection (c) of this section to meet their necessary additional expenses that a Bureau school does not need to incur. These additional expenses may include, but are not limited to, the cost of insurance, fiscal management and auditing, legal services, archives, contract or agreement administration, and services for personnel management, procurement, and property management."

H.R. 5 provides for a very complicated formula based on the assumption that the amount of indirect costs that some schools have been receiving are appropriate amounts, that those schools have been using those amounts appropriately and that the formula developed provides an equitable distribution to all schools. This formula consolidates into one grant all contracts received by a tribal organization and determines an indirect cost rate based on all government contracts. This approach does not recognize the difficulty of obtaining accurate interagency information. We are not convinced that this formula was developed with accurate data when considering

all contracts. Further, we do not believe that we should be responsible for providing either the rate or the dollars necessary to administer other Federal contracts. Our calculations also indicate that this formula would generate a substantial increase in administrative funds for these schools and would require, based solely on their BIA education funding, an additional \$7 to \$10 million if implemented. This increase would not be based on any objective showing that the additional funds are in fact needed.

In short, we do not believe that this formula is the answer. The problem of determining and financing appropriate funding for contract school indirect costs cannot, in our view, be separated from the larger issue of indirect cost funding for all self-determination contracts. Creating two separate systems, one for schools and one for other contracted programs, will only confuse matters and increase administrative burdens on both the Bureau and tribes. We are anxious to work constructively with the Congress to resolve this broader issue.

Mr. Chairman, approximately a year ago I suggested a plan of action that I believed would move us in the direction of a high quality education program for the 11% of Indian children now educated through the BIA. That suggestion was to involve tribes in the operation of schools on their reservations and hold them accountable for the results. In lieu of tribes accepting such responsibility I suggested that local public school districts could provide for these Indian children as they already do for 82% (7% are in private schools) of Indian children and which by law they have an obligation to provide. This suggestion was premised on the Federal Government providing full funding to the tribes or public school districts assuming such responsibility.

This proposal was not offered as a solution to all the problems of poor education on the reservation. I believe, however, that it pointed us in the

right direction. We need on the reservations educational systems that can be held accountable, not fragmented, autonomous systems in which children can often be lost or "fall through the cracks." The proposed legislation in S. 1645 and Title VIII of H.R. 5 puts Indian tribes in control of the education, but no effective system of accountability has been offered. No public school system in the United States attempts to locate all accountability for the schools at the community level. Whatever the intent of the proposed legislation, the effect is to remove virtually any effective accountability. What we do--BIA and Congress alike--is, of course, justified in terms of what is good for Indian people, but we should not hide from the facts of what is being proposed. The proposed legislation sets up the BIA and the Indian educational systems for ever deeper failures. More importantly, it sets up Indian people and their tribal governments for failure.

The real issue of providing quality education for Indian children, for whom the Bureau has responsibility, is often confused by concerns for sovereignty, tribal corporate rights, funding issues, employment and local control. There are some BIA schools that are doing an outstanding job of educating our young people--as evidenced by all objective criteria. In many instances, the record of the public schools for Indian students is very good, also. We know the educational conditions which lead to success. We need to stop responding to the sporadic and confused criticism of those who, on the one hand, see nothing but failure or who, on the other, resist any change, and to get on with the task of creating the conditions which will lead to educational success for Indian students.

I believe that Indian people want an accountable system of education for their children. I believe there are tribes that can improve the educational opportunities of their children by assuming more administrative responsibilities for their schools. Even though some tribes may initially resist assuming the responsibility of managing their educational programs, I

am convinced that this is the result of historical conditions which can be overcome and that this first response is not their final word. I also believe--I know--that if this assumption of new responsibility is to be effective, it will have to be a well-thought-out process involving the cooperation of the BIA and the local schools systems. To divest the Bureau of established oversight responsibilities is an invitation to disaster--with our Indian children being the victims.

I also believe that some schools should be contracted to the local government that now provides education for 82% of the Indian children. I believe that where it is possible cooperative agreements between tribes and state public systems would concentrate our efforts at improving one system. Whatever is done should be done to improve the education of our Indian children and not in pursuit of side issues.

This concludes my prepared statement. I would be pleased to answer any questions the Committee may have.

INDIAN EDUCATION AMENDMENTS OF 1987

These comments reflect the Department of the Interior's position on the issues addressed in S. 1645 and Title VIII of H.R. 5 (H.R. 5). Title I of S. 1645 and Part A of Title VIII of H.R. 5 are general provisions covering several issues. Therefore our comments will be specific to each issue. Title II of S. 1645 and Part B of Title VIII of H.R. 5 provide an alternative grant process. Our comments will be a more general discussion of this process.

Section 102 of S. 1645 and section 8101 of H.R. 5 ("Recognition of Federal Schools") amend the provision in 25 U.S.C. 2001(g) which now require the BIA to have and follow regulations for school closure, consolidation or substantial curtailment. The amendment provides statutory recognition and authorization for each BIA funded school and bars the termination, transfer to any other authority, or substantial curtailment of any BIA funded school or dormitory without either express permission from Congress, or a formal request from the tribal council or councils whose children are served by the school or dormitory.

The amendment is an unacceptable interference by the Congress in the administration of education programs and can be expected to lead to the continued uneconomic operation of some facilities beyond the time when they are no longer needed and which should be closed or curtailed or transferred for operation by a local entity. Such individual administrative decisions are not appropriate for the legislative branch to make. It should be noted that the failure to close or curtail the operation of unnecessary facilities diverts funds from other BIA funded schools which are needed to improve educational services to Indian children.

Section 8102 of H.R. 5 ("Transfers") also amends the provision in 25 U.S.C. 2001(g) to include "transfer to any other authority" in the list of actions which if under active consideration the BIA must (1) advise affected tribes and school boards and (2) report to Congress. The current provision bars any "irreversible action" in furtherance of such actions until the end of the first full academic year after the report is sent to Congress. We have no objection to these amendments.

Section 103 of S. 1645 and section 8103 of H.R. 5 ("Emergency Actions") would add three new provisions to 25 U.S.C. 2001(g). The first provides an exception to the foregoing restrictions when temporary closure, consolidation, or substantial curtailment is required by emergency facility conditions. An outside inspector must conduct an inspection and determine if an immediate threat to health exists. If no immediate hazard is determined no action may be taken by the BIA under this provision. We do not believe that an outside inspector would be appropriate.

The second new provision would require the Assistant Secretary for Indian Affairs to develop regulations regarding the establishment of new schools, the initial funding of proposed contract schools, and the expansion of programs in BIA funded schools. However, the regulations may not provide that a decision may be based primarily on the geographic proximity of public schools but they shall provide that equal weight must be given to (1) geographic and demographic factors, (2) the success of BIA and other school programs or potential programs, and (3) the input of all parties.

Although we do not object to the intent of this second new provision, we believe both provisions should be redrafted for clarity. The instruction to give "equal weight" to subjective nonmeasurable factors sets up the BIA for charges of noncompliance that it would find difficult to refute. We note that the provisions are not consistent with a similar provision discussed below.

The third new provision authorizes the BIA funded schools at the Pueblo of Zia (New Mexico) and the Tama Settlement (Iowa) to be expanded to kindergarten through grade 8 at the request of their local school boards. These types of decisions are best left to the Executive Branch.

Section 104 of S. 1645 and section 8104 of H.R. 5 ("Boarding Standards") would amend the provisions in 25 U.S.C. 2002 to allow the dormitory standards required by that section to be waived under the same procedure as for the waiver of academic standards under 25 U.S.C. 2001(d). A Bureau funded school could not be closed, transferred to another authority, consolidated, or have its program substantially curtailed for failure to meet the dormitory standards. By February 1, 1988 the Assistant Secretary for Indian Affairs is required to submit a report to Congress detailing the costs of implementing the standards. It should be noted that under 25 U.S.C. 2002(c) the Secretary of the Interior is required to submit such reports annually (since 1981) to Congress at the same time that the BIA's budget requests are sent to Congress.

We object to this provision because (1) it locks Indian children into dormitory situations that are unsafe or unhealthy and (2) it assumes that the only remedy for failure to meet the dormitory standards required by the law is the expenditure of money for dormitory expansion without regard to the possibility of more cost effective solutions such as the education of the students in other underutilized BIA funded boarding schools or in day schools near their homes.

Section 105 of S. 1645 and section 8105 of H.R. 5 ("Regulations") would replace an unnecessary provision in 25 U.S.C. 2003 with a new provision that is intended to freeze most of the BIA's current education regulations by prohibiting changes except by Act of Congress (S. 1645) or enacting them into law by reference

(H.R.5). The provisions in title 25 of the Code of Federal Regulations that would be frozen are:

- Part 31 Federal schools for Indians
- Part 32 Indian education policies
- Part 33 Transfer of Indian education functions
- Part 36 Academic and dormitory standards
- Part 39 The Indian school equalization program
- Part 42 Student rights
- Part 43 Maintenance and control of student records

The BIA education regulations that would not be frozen by either bill are Parts 38 (Education Personnel) and 45 (Special Education).

S. 1645 also freezes and amends Part 40 to delete the authority to provide loans and language limiting higher education grants to Indians of one-fourth or more Indian ancestry.

Section 105 of S. 1645 and section 8105 of H.R. 5 would also prohibit the implementation of any new guideline, policy, procedure, or Executive action of general effect with respect to matters addressed by these regulations.

We strongly object to these sections as an attempt by the Congress to take absolute control of the administration of the BIA's education programs away from the Executive Branch. The provision would leave the BIA with no method of meeting the need for changes and improvements in the administration of its education programs. It violates the distinction between law and regulations to implement laws by in effect requiring that little or nothing can be done administratively and that everything must be done by the enactment of laws. Although S. 1645 provides the Secretary with the authority to waive any of these regulations for "the benefit of an Indian", this provision would be meaningless if regulations had the force of law. It is also in gross disregard for establishing a quality education program for students and gives the appearance of caring more about the continuation of existing schools and programs while disregarding students.

Section 106 of S. 1645 and section 8106 of H.R. 5 ("Formula Provisions") would amend the provision in 25 U.S.C. 2008(a) to make relatively minor changes in the fund allocation formula developed under that subsection. The formula is in 25 CFR Part 39 which section 8105 mentioned above would enact into law.

We object to those sections because they deal with matters more appropriately dealt with by administrative changes to the regulations involved.

Section 107 of S. 1645 ("Administrative Cost") requires the Secretary to provide each contracted school with an

administrative cost allowance determined to be the actual need or an amount determined under a formula prescribed by regulation.

Supposedly, the actual need of administrative costs have been determined through the current negotiated indirect cost rate system. We do not believe these rates reflect actual need and we do not usually receive enough funds from Congress to fund 100% of the rates negotiated. While we prefer the language in the Senate bill over the formula established in the House bill, we do not feel the problem of determining and financing appropriate funding for contract school indirect costs can or should be separated from the larger issue of indirect cost funding for all self-determination contracts. We believe the issue should be addressed in this larger context rather as part of this legislation.

Section 8107 of H.R. 5 ("Administrative Costs") would amend the provision in 25 U.S.C. 2008(c) to provide a statutory method of determining the administrative or indirect cost of a contractor in connection with BIA contracts for the operation of schools.

We strongly object to this formula because it is too complicated and contains serious problems that must be resolved. The formula considers all sources of funding at a school, or for a tribe if the tribe is the contractor, in calculating the amount of administrative costs. Generating adequate data to develop a formula on this basis is extremely difficult. From our analysis we do not believe that adequate data was used in developing this formula. Further, if this premise is used a large tribe could decide to contract all BIA program on its reservation and effectively receive an astronomical administrative cost rate probably resulting in substantial decreases for other schools. We estimate that this formula would substantially increase the current administrative cost rates and would require an additional \$7 to \$10 million for education programs alone.

Section 107(b) in S. 1645 and section 8108 in H.R. 5 provide definitions of administrative cost allowance. We believe the definition in the Senate bill is the better definition because the language is more precise and does not include items appropriately chargeable as direct cost of the operation of a school or dormitory for which funds are otherwise provided by the formula in 25 CFR Part 39.

Section 108 of S. 1645 and section 8109 of H.R. 5 ("Local Procurement") would amend the provision in 25 U.S.C. 2009(a)(4) to delete the authority for the issuance of guidelines by the Assistant Secretary for Indian Affairs for the use of the liberalized procurement authority authorized in that provision and adds certain requirements for the use of that authority.

We do not object to the addition of the specified requirements for the use of the procurement authority, since they are consistent with current BIA policy, but we strongly object to the

removal of the authority for the Assistant Secretary to issue guidelines, which would curtail his ability to discourage wasteful and inefficient procurement.

Section 109 of S. 1645 and section 8110 of H.R. 5 ("Coordinated Programs") would add a new subsection (e) to the provision in 25 U.S.C. 2009 which would require the BIA (subject to the amount available under the funding formula in 25 CFR Part 39) to implement any relevant provisions of a cooperative agreement between a BIA funded contract school and a local public school. The BIA need not be a party to the agreement nor does it have a role in its development or approval.

Constitutional issues are raised whenever parties not appointed by the President direct the use of Federal funds under Federal law. This provision raises just such an issue.

Section 110 of S. 1645 and section 8111 of H.R. 5 ("Consultation") would add a subsection (b) to the provision in 25 U.S.C. 2010 to require consultation with tribes as to actions under the act. It also provides for the first time a statutory definition of the term "consultation" with tribes.

The consultation process proposed would make the performance of our duties virtually impossible by imposing a tribal consultation process that does not allow for appropriate administrative planning.

Section 111 of S. 1645 and section 8112 of H.R. 5 ("Indian Preference") would amend the provision in 25 U.S.C. 2011(f) to extend the authorized waiver by a tribal organization of the Indian employment preference laws to the initial hiring of an individual.

We do not object to this provision but we believe this flexibility should exist for the BIA as well. Like the tribes, we support the concept of Indian preference but we believe that in those instances where competent qualified Indians are not available we should be able to employ competent qualified non-Indians.

Section 112 of S. 1645 and section 8113 of H.R. 5 ("Personnel") would add a new section 1143 to the Education Amendments of 1978 relating to the pay of BIA education personnel. Subsections (a) through (d) require a study to be conducted by the Assistant Secretary for Indian Affairs and a report to Congress by March 1, 1988 on BIA funded school personnel costs, including the salaries paid education personnel in BIA funded schools and salaries paid for comparable positions in "proximate local education agencies of States in which [BIA] funded schools are found" and "State average salaries." The study is to be paid for "from funds appropriated for administration"

We do not object to the study requirement except to note that BIA school personnel are already compensated at the same rate as other Federal employees in comparable positions. Also, any comparison of salaries should include consideration of differences in work hours, fringe benefits, or other factors which may be relevant including the distribution of personnel compensation between teaching and administrative staff, and the proportion of total school resources dedicated to personnel compensation.

The new section 1143(e) that would be added requires the Secretary to grant the local Bureau school supervisor the post-differential pay authority in 25 U.S.C. 2011(3). A 5% disparity in compensation rates at a school shall automatically trigger the authority.

Title II of S. 1645 and Part B of title VIII of H.R. 5 are titled "SELF-DETERMINATION GRANTS" and are almost identical. The intent is apparently to achieve less BIA interference in the operation of what are now called "contract schools". We agree with this goal and, in fact, we would like to see a change for all BIA contracted programs. Congress should consider a major overhaul of the P.L. 93-638 contracting system and not just limit a new proposal to the education program.

Under these new grant provisions a school would apply for an initial grant and be required to meet certain standards and eligibility criteria. Once a grant is provided, a school would be required to submit annual reports but would not reapply annually. The grant would be extended automatically subject to availability of appropriations and satisfactory performance as defined in the bills. We agree with this concept but not these provisions. We note that there is no specific mention that this grant system is an alternative to the current contracting system and that funds available under this system are in lieu of funds available under the existing system.

Satisfactory performance is defined in the bills as follows:

1. One of the following: a) accreditation (or candidacy status) by an accrediting agency as determined by the Secretary of Education, or by a Tribal Division of Education, b) in compliance with the BIA standards as determined by an outside evaluator, or c) received a positive evaluation once every three years for performance compliance under a P.L. 93-638 contract prior to the enactment of this act (the evaluator to be agreed upon by the school & BIA, but if in the absence of an agreement, the tribal authority decides on an evaluator or does the evaluation); and

2. The submission of four reports that include a) an annual financial statement reporting revenue and expenditures as defined by the grantees cost accounting system; b) a biannual financial audit in accordance with the Single Audit Act; c) an annual submission to the Secretary of the number of students served and

a brief description of the program offered under the grant; and d) a program evaluation (based on the appropriate standards) to be done by an outside evaluator.

We agree with most of the criteria for determining satisfactory performance but we must insist that a school either be accredited by an accrediting agency or meet BIA standards. If outside evaluators are used we must be assured they are qualified to do an evaluation and would have no conflict of interest in the results of the evaluation. Therefore, we would recommend that a list of acceptable evaluators be developed between the BIA and tribal contractors that could provide this service. As an alternative perhaps evaluation teams should be developed to include an outside evaluator (professional educator) an appropriate BIA employee and a person from another school system.

We would also point out that the Secretary of Education does not now approve accrediting agencies for elementary and secondary schools, and do not believe this is an appropriate role for that Department.

We believe that the program evaluation should also include test scores for each grade and that the reports first be submitted to the tribal governing body for review and certification before being submitted to the BIA.

The amount provided to a school under the grant would include their calculated amount under the Indian Student Equalization Formula, the operation and maintenance amount, funds provided under other laws (Chapter I, etc.) and administrative costs as determined by the formula under the Act.

We have no objection to consolidating into one grant all appropriate amounts but we have major objections to the provisions of both bills regarding administrative costs and the degree of Federal oversight permitted. (See our previous discussion of section 107 of S. 1645 and section 8107 of H.R. 5.)

Under this proposal the role of the Director of Indian Education Programs is simply to receive and approve applications and to receive the required reports. The Secretary has authority to issue regulations relating to the discharge of duties assigned to the Secretary under this title but in all other matters the Secretary may not issue regulations. The major role anticipated for the BIA is to accept applications and reports from the tribes and then funnel money to them.

Such a limited scope of oversight is wholly inconsistent with the clear Federal responsibility to assure there is accountability both for Federal funds and for the quality of service being provided. We must have more involvement in the evaluation procedures and the reports must not only be submitted to BIA personnel but should be reviewed, and if a determination is made that changes are needed these personnel must have the authority

to require the changes. We like the idea of the BIA playing more of an oversight role with our primary concern focusing on the results of the service offered rather than how each penny was spent. However, we cannot agree to the very limited role outlined in these bills when the ultimate responsibility for accountability rests with the BIA and the total cost continues to be borne by the Federal taxpayer.

The bills provide for a procedure to determine if new grant applications are feasible and should be funded. A long list of criteria are to be given equal weight in making such determinations. We do not think it possible to give so many factors equal weight. New applications should be reviewed consistently but as written these sections are confusing and unworkable.

Title IV (Navajo Community College) of S. 1645 amends the Navajo Community College Act by expanding the list of appropriate expenditures for the College to be included in determining the amount necessary for the operation and maintenance of the College.

We cannot support this list of appropriate expenditures because some of the items, such as "supplemental need account" and "internal capital outlay funds" are vague while others are simply not appropriate. The amendment to section 5(b)(2)(A) is inappropriate because it apparently purports to amend language that was eliminated by the section 1351(b) of the Act of October 3, 1980 (94 Stat. 1501).

The Office of Management and Budget has advised that there is no objection to the submission of this attachment to the Committee, and that enactment of S. 1645 or Title VIII of H.R. 5 would not be in accord with the program of the President.

TESTIMONY
of the
NAVAJO AREA SCHOOL BOARD ASSOCIATION
to the
Senate Select Committee on Indian Affairs
September 29, 1987
on
S.1645

I wish to thank the Senate Select Committee on Indian Affairs for providing public hearings on this important piece of proposed legislation. It is with law making the way it is with many other things - Haste can and does make waste.

We have been through a rather grueling experience with this bill, being very critical of many of its provisions and being severely criticised for being critical of it.

We have viewed it as most important for the Navajo Tribe to take a strong and very well-considered position on this legislation which we frankly did not believe to be well thought out and balanced.

We believe that this has now occurred and the Navajo Tribal position is one we support. The BIA education system operates over one third of its total schools including more than one half of its Bureau operated schools in Navajo Nation. We hope that a new bill can be developed which will be more positive in its tone and constructive in its policy direction. The tribes, the Bureau, the school boards, and the Congress are in this thing together. It is our job to make this system work.

We believe that the federal responsibility for education involves a responsibility for ensuring quality education.

We believe that tribes can become full partners in this endeavor but that tribal authority must go hand in hand with tribal responsibility. The BIA education system must develop a high degree of credibility and that can come only from demonstrating results and schools being held accountable. We believed the accountability factors in H.R. 5 to be weak and unworkable. The Navajo position would strengthen accountability, at least in those locations where tribes have agreed to take a more substantial role in accountability functions. We do not wish to see federal trust responsibility for education abrogated in the name of self-determination anymore than we want it abrogated in the name of state responsibility.

We want to emphasize two points which are included in the tribal testimony but not included in H.R. 5 or S.1645. The first of these is the provision making BIA school programs eligible for entitlement funding under Title IV Part A. All other publicly funded schools, including contract schools, are entitled to this funding and we strongly urge inclusion of a new provision in S.1645 to do this.

Secondly, we wish to draw your attention to the section which would put wage grade school employees under the P.L. 95-561 contract educator system and provide for a more reasonable method of establishing their pay schedule.

We strongly request that you carefully consider the positive changes in the Tribe's position and very carefully consider the long term effects of the entire legislation.

Thank you.

TESTIMONY

on

S-1645

Indian Education Act - Adult Education Program

submitted by:

National Indian Adult Education Association
Reva Crawford, Co-Chairperson
(617) 232-0343

on: Sept. 29, 1987

To: Senate Select Committee on Indian Affairs
Senator Daniel Inouye, Chairperson

I. Introduction

The National Indian Adult Education Association is a voluntary, informal organization dedicated to promoting literacy and high school completion for Indian Adults. Membership is comprised of teachers, administrators, students, volunteers and interested tribal officials in Indian Adult Education programs across the country.

In order to talk about the needs of Indian Adults as they may be addressed under the Indian Education Act, it is reasonable to set out briefly the history and current status.

II. Background and Data

There are approximately 60,000 Indian adults in the U.S. with less than a high school diploma. A cumulative drop out rate of 60+% of Indian students in elementary and secondary schools insures a continuing need for adult programming on reservations and in cities.

Four major factors contribute to the large number of Indian adults who are formally uneducated/undereducated:

- 1) Lack of schools - Particularly for older Indian adults, there were not schools available in some geographic areas (i.e. Hopi has a high school for the first time this year. Mississippi Choctaw received a high school in 1967, and had boarding school arrangements for many elementary children until a few years ago.)
- 2) Economic hardships - Male adult students frequently report having dropped out of school to help support

their families

- 3) Teenage Pregnancies
- 4) Frustration with and alienation from existing school systems based on the differing cognitive processing patterns of Indian students which lead to frustration and failure in school.

Existing programs are of three types:

- 1) Title IV Part C Projects run by Indian tribes and organizations (27 programs - 67% tribal, 25% urban)
- 2) Tribally contracted B.I.A. programs
- 3) Directly operated B.I.A. programs

There is little information about B.I.A. related programs.

Repeated inquiries to the Bureau have not resulted in information on

- 1) How many projects exist
- 2) How many dollars are provided.

The line item for such services in B.I.A. is combined with other program areas, and it appears to be difficult, if not impossible, to determine the status of literacy/high school completion programs.

The difficulty is compounded by

- 1) The lack of an identifiable person at the Bureau in charge of Adult Education, and
- 2) No published regulations on what constitutes Adult Education in the Bureau

We know, informally, that some tribes have both B.I.A. and

Title IV C grants; a few have BIA only, and many have neither. A few urban centers have Title IV C, and others nothing. In addition to the forementioned problems in analyzing B.I.A. efforts, we also know, again informally, that Bureau funds are used for a variety of tangential activities and programs which are not adult literacy/high school completion; like, alcohol education, arts and crafts instruction and recreation.

While it is difficult to ascertain how many dollars are programmed from the Bureau for Adult Literacy and high school completion, it appears the actual amounts which are pertinent are negligible.

The Title IV, Part C section of the Indian Education Act serves about 5% of the adult students in need of instructional services at the present time, with an appropriation of \$3,000,000 divided among (27) grantees.

The Title IC, Part C Adult Education Program has dropped from a high of \$5,930,000 in 1979 to the present \$3,000,000 level -- a 50% reduction.

In addition to the limitations imposed by the appropriation level (which is the major impediment to reaching and serving Indian adults, the following are significant barriers:

- 1) Cyclic funding - during the past five years the Department of Education has provided single year competitive grants. The intense competition and short funding cycle has resulted in a round-robin of money which drops students who have started a program in one geographic location, and gives to another program which

will also drop students as the money passes on. This is particularly critical for the literacy student who can not complete instruction in 12 months.

- 2) Lack of Technical Assistance- neither the Department of Education nor existing resource centers can provide technical assistance pertinent to Adult Education. The constantly changing geographic distribution of grantees does not make it feasible to provide TA on regional basis as is done with parts A and B. Dissemination of successful models, staff training, curriculum development and other important needs of programs are neglected.
- 3) Administrative decisions - have truncated successful models by cutting off staff development, disallowing critical support services and refusing to fund services which are standardly provided for children and adolescent programs.

III Data on Program Impact

You have a right to know, on behalf of your constituents, what results your money, and theirs, is accruing.

One National Study of Indian Adult Education has been done. It was a highly credible study for which many of us sacrificed program dollars. This study in which many of your dollars were invested was completed eight years ago. To our knowledge, the study has still not been released by the Department of Education. The results have not been disseminated, nor the data used by the Department to better administer the Part C Program.

The erratic funding patterns mentioned previously preclude

most programs following long term gains of students in terms of income, receipt of public assistance and continuance of education. However, two studies, one of an urban program and one reservation program which cover, respectively, a five and eleven year period will give you a clear picture of the impact your dollars have had in Indian communities.

Impact of Adult Education on Urban and Reservation Communities

A. Urban Community

Grantee: Boston Indian Council, Inc.

Boston is a typical urban center which has a high migration rate to and from reservations in Maine and the Maritime areas and from other tribes throughout the U.S.

Indian people come to the city because they know someone there -- a cousin, an uncle, an acquaintance, who says there are jobs available for which Indians will qualify.

New arrivals find there are more jobs available than on the reservation, but the pay they receive won't cover the basic necessities of rent, food and utilities which are so much higher than on the reservation. These new arrivals see adult education as a way up and out of low paying jobs.

Does it work? The following study of GED graduates who went through the Title IV Part C program over a five year period gave the answers.

Upon entry into the program, student incomes were low or nonexistent.

Student Incomes upon Entry
(Five year period)

No income: 23%	Less than \$3,000: 18%	\$3,000-\$7,000: 18%
\$7,000-\$9,000: 22%	\$9,000-\$12,000: 18%	\$12,000+: 0%

No one made over \$12,000 a year, and 41% made less than 3,000 a year!

Upon follow-up after going through the Adult Education program, incomes changed dramatically.

Incomes After Graduation from Adult Education

No income: 0%	Less than \$3,000: 13%	\$3,000-\$7,000: 5%
\$7,000-\$9,000: 0%	\$9,000-\$12,000: 8%	\$12,000+: 19%

Whereas, no one made over \$12,000 upon entry into the program, 19% made over \$12,000 after completion, Further, while 23% had no income upon entry, all graduates had income at the time of the followup study. Students gained an average of \$5,000 in income on post completion.

Equally as impressive, 55% of the adults entering the program received public assistance, but only 5% those same students still received public assistance after completing the programs. This represents a ninety per cent reduction in receipt of public assistance.

While the study did not correlate further training and education with public assistance, it seems safe to assume that some of the five percent still receiving assistance were continuing in further training or higher ed. since many respondents indicated they were continuing some form of education.

Do GED graduates go on to higher education? Again, the answer is overwhelmingly "yes." Sixty-one percent of the graduates completed further training, and nine percent had earned between 60-120 hours of college credit.

These rates are far higher than are found for regular high school graduates.

B. Reservation Communities

Grantee: Mississippi Choctaw

What about on isolated reservations, where there are not many jobs? Does Adult education make a significant difference in communities where there has been little emphasis on education, and all adults are native language speakers? Yes.

In 1975 when the Adult Education Program under Title IV Part C and B.I.A. monies was begun, there were only 290 high school graduates in the whole history of the tribe.

In 1986 when the Choctaw demographic study was done, the Adult education program had graduated 437 Choctaw Adults with

GED's. This figure is 58% of all the Mississippi Choctaws who have ever completed high school! There are more GED high school completions than regular high school graduates. Higher Education gains are also dramatically impacted by the GED program -- 85 of those GED graduates have earned college degrees.

Income gains were also positively associated with adult ed completion. Adults with out a GED or diploma earned an average income of \$2,693, but GED grads averaged \$5,133. Employment is 35.5% higher than for nongraduates.

While the income gains are not as high for reservation as they are in the city, it must be remembered that the reservation participants are isolated in an economically depressed area with low wages, but a much lower cost of living. The reservation gains are comparable or even greater than urban gains when cost of living is considered at each of the two sites.

There are many qualitative gains made by participants which can not be measured by income gains or jobs.

In the Boston Program, only 1% of the graduates felt the same way about themselves after graduation as they did before. Ninety-nine percent had a better self concept which they defined in these ways:

- * Respect and admiration from others
- * Pride of extended family for the graduate
- * Satisfaction on completing a goal
- * Surprise and pleasure in verifying intellectual abilities

are the major changes often reported by graduates.

These changes affect spouses, extended families and children who have viewed the importance of education in an active demonstration by their parents.

These two programs are not isolated examples of the powerful impact of Part C on Indian Adults' lives.

The Cherokee Nation of Oklahoma had 105 GED graduates last year. Within a four year period, they have graduated 347 students. These are students from small rural communities like Rocky Mountain, Oaks, and Belfonte; communities reached by gravel roads; communities where adults are setting active examples for their children.

When the Pueblo of Zuni, the largest of all the Pueblos in New Mexico, had funding from Title IV C, the Adult Education program produced more high school graduates in a year than did the local high school.

We could go on. We hope you will go on. Give our adults classes to attend. Your predecessors did not always provide them with schools when they were children. They deserve an opportunity to learn to read and to write. They deserve to have the pride and self-esteem of employed workers supporting their families.

Despite many limitations, Adult Education has proven to be the most cost effective of programs. Adults complete instruction 3 to 5 times as rapidly as children at a fraction of the cost. Further, incomes are raised by an average of \$5,000 following completion of a program with as much as 80% reduction in receipt of public assistance. The amount of reduction in public

assistance alone more than pays for the costs of programs.

Until such time as a formula can be arrived at which will provide services to the majority of adults who need them (see attached example of formula), we urge your consideration of the following:

- 1) An appropriation of \$9,000,000 with a ceiling of \$250,000 for any individual grant in the services category.
- 2) Authorization of a study by a competent, experienced Indian tribe or organization prior to reauthorization in 1993 of the Act which would identify:
 - 1) success models,
 - 2) extent of need
 - 3) program impact
 - 4) research and Curricula needs.
 - 5) existing mechanisms and needs for new mechanisms for delivery of services supportive to instruction.
 - 6) barriers to effective programming.
- 3) Priority for a contract or grant to provide Adult Education Technical Assistance on a national basis
- 4) Elimination of requirements in Sec. 422 of the EPD program which are prejudicial to Adult Education and Early Childhood Education.
- 5.) Elimination of factors in the Fellowship Program which are prejudicial to older student applicants.

NO. of Students Served	Materials Cost		Average Instructional Salary Cost				Administration Supervision Cost	Student Transportation Factors						Curriculum Dev Counseling/Pac Office Support		Average Program Costs Less Equip. Fringe & Indirect	
	ABE	GED	ABE/TP	ABE/CT	GED/TP	GED/CT	TPP	CTP	+1	+2	+3	+4	+5	TPP	CTP	ABE	GED
50	1815	1265	35,000	45,000	17,500	22,500	14,000	-0-	-0-	4,000	8,600	10,000	12,000	9,600	9,600	70,015	53,465
75	2722	1898	52,500	67,500	26,250	33,750	14,500	-0-	-0-	4,100	8,900	10,500	13,500	13,200	10,200	97,822	65,298
100	3630	2530	70,000	45,000	35,000	45,000	26,500	15,500	300	4,400	9,200	11,000	14,500	13,800	10,800	108,130	90,530
125	4537	3162	87,500	112,500	133,750	56,260	26,500	15,500	450	4,600	9,500	11,500	15,500	17,400	11,400	154,937	173,567
150	5445	3795	105,000	135,000	52,500	67,500	26,500	15,500	600	4,800	9,800	12,000	16,500	18,000	12,000	176,745	115,345
175	6352	4427	122,500	157,500	61,250	78,750	26,500	15,500	750	5,000	10,100	12,500	17,500	21,600	12,600	200,052	178,127
200	7260	5060	140,000	180,000	70,000	90,000	26,500	15,500	900	5,200	10,400	13,500	18,500	33,600	16,200	229,060	146,860
225	8167	5692	157,500	202,500	78,750	101,250	26,500	15,500	1,050	5,400	10,700	14,000	19,500	34,200	16,800	250,867	158,392
250	9075	6325	175,000	225,000	87,500	112,500	26,500	15,500	1,200	5,600	11,000	14,500	20,500	37,800	17,400	274,175	171,425
275	9983	6958	192,500	247,500	96,250	123,750	28,900	15,500	1,350	5,800	11,300	14,000	21,500	38,400	18,000	296,733	185,358
300	10890	7590	210,000	270,000	105,000	135,000	28,900	15,500	1,500	6,000	11,600	15,500	22,500	42,000	21,600	323,640	200,340

KEY

ABE - Adult Basic Education (grade level 0 - 6)

GED - General Education Development (high school equivalency)

TP - Teaching Paraprofessionals Approach

CT - Certificated Teachers Approach

FACTORS

+1 = Urban/Indian Population Density/Mass Transit

+2 = Urban/Scattered Indian Population/Mass Transit

+3 = Urban/Scattered/No Mass Transit

+4 = Small Town/Rural/High Concentration

+5 = Rural/Sparse

**NATIONAL
ADVISORY COUNCIL
ON INDIAN EDUCATION**



2000 L Street, N.W., Suite 574
Washington, D.C. 20036
(202) 634-6160

TESTIMONY

to

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
SR-485 Russell Senate Office Building
Washington, DC 20510

September 29, 1987

by

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION
W. Buck Martin, Chairman

presented by

Lincoln C. White, Executive Director

A Presidential Council  Established by Congress

TESTIMONY

9-29-87

Mr. Chairman, members of the Senate Select Committee on Indian Affairs, I thank you for the opportunity to appear today. I am here in behalf of the National Advisory Council on Indian Education (NACIE). As you are aware, the National Advisory Council on Indian Education is responsible for advising the U.S. Congress and the Administration with regard to Federal education programs benefiting Indian children and adults. Today we are testifying on S.-1645, the Indian Education Act Amendments.

The Council appreciates the time your committee has devoted to the reauthorization of the Indian Education Act of 1972. This council supports your efforts. Your consideration of NACIE recommendations for the continued and improved success of this important act is also appreciated.

INDIAN PREFERENCE, U.S. DEPARTMENT OF EDUCATION

NACIE greatly appreciates and thanks you for the consideration and inclusion of our recommendation to promote Indian preference within the U.S. Department of Education as found in Senate bill, S.-1645, Title I, Sec. 114. This provision states:

"The Indian preference provisions of section 12 of the Indian Reorganization Act (25 U.S.C. 472) shall, on and after the effective date of this section, be considered to be applicable in the case of any office or position within the Office of Indian Education, Department of Education, involved in the administration of the Indian Education Act of 1972."

NACIE has recommended in almost every annual report to the U.S. Congress and the Administration that Indian preference be established for the Office of Indian Education Programs (IEP), U.S. Department of Education. The IEP office should be staffed by qualified Indian educators who have been selected to work for the Education Department based on their expertise, knowledge, and capabilities gained from working with and for their unique, Indian population. NACIE would also like to recommend that the U.S. Department of Education fulfill its earlier expressed intent of identifying qualified Indian applicants by opening all IEP vacancies to a national level of applicants.

Over the past few years, the Council has received numerous written and oral testimonies on many various Indian education issues. But by far, one of the most consistent issues is for Indian preference to be implemented within the U.S. Department of Education. Included here is a quote from testimony received at the NACIE office:

"Programs that are established for Indian people are best operated when Indian people themselves have control to implement such programs; only through this concept will Indian self-determination become a reality."

In our advising role, NACIE would like to express once again our support to increase the number and promote the retention of qualified Indian personnel for the permanent staff of the Office of Indian Education Programs, U.S. Department of Education, with the assurance that civil service levels are comparable to those in similar programs within the U.S. Department of Education.

DETERMINATION OF ELIGIBILITY

The other major issue that NACIE would like to address is that of eligibility for services, which we have been working together with your committee to achieve a satisfactory "determination of eligibility" for services provided under the Indian Education Act of 1972 (Title IV). We thank you again for your committee's diligent work on this issue.

NACIE feels that strengthening Indian eligibility requirements for participation in the U.S. Department of Education's programs is critical to the funding process of Title IV programs. The Indian Education Act was established to serve Federal and state recognized tribes and to ensure on- and off-reservation Indians the right to education. Adherence to regulations that require either Federal or state tribal recognition would tend to prevent providing services to ineligible that would therefore decrease the amount of money available to all students.

The duly recognized tribes have the prerogative for determining eligibility. But furthermore, Indian tribes should be designated as the official bodies responsible for determining who is eligible for Title IV services. The parent committees and local educational agencies should rely on this kind of official determination. The U.S. Department of Education should acknowledge these decisions.

NACIE appreciates your committee's effort to preserve the Title IV program in the manner originally intended by the U.S. Congress by reaching a suitable balance between tribal interests and the needs of many Indian children who are not always enrolled members of a tribe.

OFFICE OF INDIAN EDUCATION PROGRAMS AS AN INDEPENDENT AGENCY

NACIE seeks the re-establishment of the Office of Indian Education Programs as an independent agency within the U.S. Department of Education. Such an action would elevate the position of Director of Indian Education Programs office to that of an Assistant Secretary reporting directly to the Secretary of Education. NACIE believes this action is vital to strengthening Indian Education in the Department.

Programs funded through the Indian Education Act serve a unique population of Indian students that includes not only elementary and secondary students, but adult education programs, Indian controlled schools, and undergraduate and graduate student fellows. In order for IEP to be effective, Indian people need the direct line of communication to the Secretary to assure that their needs are expressed. The Office of Elementary and Secondary Education currently oversees four subdivisions -- state and local education, compensatory education, migrant education, and Indian education. We feel that it is time to give Indian education equal access by placing the head administrator of IEP on the same level, for example, as the principal administrator of the Office of Bilingual Education.

NACIE feels that IEP was originally intended by Congress to be an independent agency. It was placed under OESE administration by former Secretary of Education Shirley Hufstadler. We have recommended the re-establishment of IEP as an independent agency since the separate entity of the U.S. Department of Education was established in 1979.

APPROPRIATIONS

Funding for all parts of Title IV programs of the U.S. Department of Education for fiscal year 1988, except for program administration, have been funded at the same level as found in fiscal year 1987. Program administration consists of IEP and MACIE. For fiscal year 1988, both IEP and MACIE have slightly increased budgets to account for centrally controlled costs. These centrally controlled costs include rent, telephone usage, and mail usage that we are now required to pay out of our yearly budget. In order to ensure that all Title IV programs operate as they were originally intended to by Congress, MACIE recommends that Title IV be appropriated sufficient funds to compensate for inflationary factors in the U.S. economy, which includes administrative costs of salary increases and other contingent expenses.

MACIE is fully aware of why the Indian Education Act was implemented and how it has been put into practice in the United States. The basic objective was to improve the educational offerings for Indian students by correcting the inadequacies found in the Bureau of Indian Affairs schools and the public school systems. In its brief existence, this Act has had an important role in Indian education. MACIE recommends that this Act be reauthorized.

Mr. Chairman, MACIE would like to submit this supporting written testimony at this time. With that, I will close and will respond to any questions the Committee may have.

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
TESTIMONY OF THE ASSOCIATION OF COMMUNITY
TRIBAL SCHOOLS

ON

S. 1645, THE INDIAN EDUCATION AMENDMENTS ACT

SEPTEMBER 29, 1987

ROOM 485 SENATE RUSSELL BUILDING

Presented By John Forkenbrock
Association of Community/Tribal Schools
Washington, D C.

Good morning Mr. Chairman, my name is John Forkenbrock and I am here today to present testimony on behalf of the Association of Community Tribal Schools (ACTS). I am actually a stand-in for Mr. Roger Bordeaux, who serves as the Executive Director for the association. Roger would be here himself this morning to deliver the testimony, but he is currently a graduate student at the University of South Dakota and his class schedule makes its impossible for him to be here.

The Association of Community/Tribal Schools is an association which represents the contract school community. It was in his capacity as Executive Director of this Association that Mr. Bordeaux spent a considerable amount of time this past winter and spring in Washington and elsewhere around the country talking about the approach to tribal contract elementary-secondary school funding which is addressed in S. 1645.

Please know Mr. Chairman, that ACTS supports S. 1645 and believes it represents a major initiative in improving the quality of education in tribal contract schools, by helping insure a timely receipt of funds and by reducing as much as possible, the bureaucracy which quite frankly deters what otherwise could be a workable administrative system.

We particularly support Mr. Chairman, Title II of the bill -- Self-Determination Grants. This provision makes clear and underlines the importance of local control of Indian elementary and secondary education while at the same time emphasizing the importance and recognition of the role of tribal government in any education delivery system present in Indian country.

The approach embodied in Sections 207 and 208 of Title II insuring accountability and which consolidates the grant making process into two payments is highly supported by ACTS and quite frankly, is the cornerstone by which this legislative approach is held together. Absent these sections, the bill would be almost meaningless in attempting to improve the present system.

We would however Mr. Chairman, recommend one very important inclusion to S. 1645 which will help insure that contract tribal schools will have the financial wherewithall to actually run their schools as they should be run. This inclusion would be the addition of an administrative cost formula which would determine the actual administrative cost amount for each contract school, using a set of objective criteria which would determine the amount

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of administrative cost support a contract school would receive.

ACTS has proposed a formula to the Committee staff which we feel will generate an administrative cost amount which insures contract tribal schools sufficient funds by which to operate. We also recommend to the Committee that the new formula be phased in over a 3-year period and that the Bureau of Indian Affairs be charged with the task of coming up with a permanent formula using criteria to be established by an Accounting firm using the definition of administrative cost as defined in the legislation.

We support fully the approach taken by other panel members from the National Indian School Board Association and those representing the schools on the Navajo Reservation. We do stray off course some from what the Bureau-operated schools support in way of the administrative formula. Allow me to elaborate.

It is our hope that the Committee will consider the approach used in H.R. 5, which has already passed the other body, that folds the administrative cost payment as determined under the formula, into the Indian School Equalization Program formula (ISEP) for distribution to the contract schools. We ask that this be done so as to insure three (3) very important ingredients which we feel are necessary to maintain the stability of a contract school. The most important of which is that we receive an administrative cost amount which we can count on and secondly, one which is received in a timely fashion, i.e. as a part of the ISEP formula. The third ingredient concerns the issue of over-recovery/under-recovery.

Allow me to explain. Currently, a contract school may be entitled to an indirect cost amount as determined by the Interior Department's Office of Inspector General. But, because of a shortfall in appropriations we may only get a percentage of that amount. Part of this problem is caused because the Appropriation Committees of the Congress are never really told by the Bureau of Indian Affairs what the administrative cost need is for tribal contract schools. Schools are led to believe that they will receive a set amount, but after all is said and done the amount is less than what is expected.

Secondly, the amount of administrative cost a tribal contract school is to receive may vary by area. It appears from past experience that the BIA area offices look at the contract/indirect cost fund as a slush fund of sort or at least they consider it to be flexible. For example in 1982 or 1983, we experienced a 13% cut in

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the Aberdene area and this wasn't told to the schools in the Aberdene area until August (two months before the end of the fiscal year in which they were to receive the funds and after the school year had already ended). This was done to fund a new contract which was agreed to in July, a full month before the schools in the Aberdene area were told of the 13% cut. So you can see Mr. Chairman, contract tribal schools have no assurances on how much administrative cost money they will receive nor when they will receive it.

A third problem with the present system is the issue of over-recovery/under recovery which is an audit problem associated with the way the Bureau administers indirect cost. Presently an indirect cost rate is established by the Inspector General's office as I already alluded to above. The money however, is distributed by the Bureau of Indian Affairs. The I.G.'s office also is charged with conducting the audits to determine if the expenditure of those funds has been done properly. The I.G.'s office goes into an audit with a number which is basically an entitlement as developed under the rate. The problem rests with the fact that the actual amount received by the school because of those reasons described earlier, will not conform to the entitlement established by the I.G. When the audit is conducted the I.G. questions the contractor as to where the additional money went. The school will of course claim they never received it. It now becomes a problem of recovering those dollars -- at least from the I.G.'s point of view. Both the I.G. and the Bureau recognize this as an administrative problem, but nothing to date has been done to address the problem until of course this legislation was proposed.

By developing a new administrative cost formula outside the I.G. and by integrating those dollars into ISEP, contract tribal schools will finally break the chains of the past. They will for the first time know the amount they are to receive and in addition those dollars will not nor can not be considered slush funds to be used by the Bureau for other contracts not already funded during the fiscal year in which the contract support dollars are being allocated.

Mr. Chairman, as I alluded to above we are concerned about the fears expressed by some that in folding the administrative cost dollars into the ISEP formula it will take or at least has the potential of taking dollars away from students. After all ISEP is a formula by which program dollars are allocated to Bureau-funded schools based on a weighted student unit approach. Please know

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we share that feeling and do not support denying ISEP monies from where they are most needed, i.e. education program

To address this concern let me tell the Committee that we have calculated what the cost would be for the formula to be implemented and we feel the dollars will be there to fund the approach we are suggesting. In addition, to further protect program dollars we recommend that the formula be phased in over a 3 year period and we propose also, that a holdharmless clause be made a part of the legislation insuring that the dollars generated per weighted student unit under ISEP do not fall below the dollars per weighted student unit in FY 1987-- \$2,230.00 per WSU.

To put this into prospective. Currently (FY 1987), ISEP receives an appropriation of \$162,000,000. The number of weighted student units in FY 1987 as presented by the Bureau of Indian Affairs totalled 68,500. The Bureau does not propose any significant increase in WSU's for FY 1988. In fact over the past 5 years the number of WSU's has actually decreased. Add to this the fact that presently the amount of contract support from all sources coming to contract tribal schools totals approximately \$11,000,000. The amount of contract support needed to fund the formula approximates \$14.9 million. Thus, currently there exists a \$3.9 million shortfall.

If we consider that we propose to phase in the new formula over a 3 year period, the amount needed in addition to the \$11,000,000 already funding indirect cost support would be an additional \$1.3 million per year. Thus the total indirect for FY 89 would be \$12.3 million, for FY '90 it would be \$13.6 million and for FY '91 it would be \$14.9. If we presume a ISEP funding growth rate at 2.7% (which is what it has averaged over the past 5 years), ISEP would grow (not inclusive of the formula for indirect cost) to \$166,682,000 in FY '89, \$171,182,000 in FY '90, and \$175,803,000 in FY '91. If, when you add to the WSU's assuming they remain somewhat constant at 68,500, the amount of WSU's generated under the new administrative cost formula which would total out to 73,950 in FY '89, 74,600 in FY '90, and 75,320 in FY '91, the dollars generated per WSU (inclusive of the formula) would be as follows:

FY '89 -- \$2,405 (first year of phase in)
 FY '90 -- \$2,474 (second year of phase in)
 FY '91 -- \$2,519 (full implementation)

The increase to ISEP including the annual 2.7 % increase for

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program dollars and the amount needed to fully fund the formula between the base year of FY 1987 and FY 1991, the year the formula would be fully funded, totals 15.7%. Of that 15.7% increase, 14.9% would go to ISEP program dollars and .08% would go to fund the administration.

Even taking a worst case scenario. If ISEP funding remained at the proposed FY '88 level of 162,000,000 and if the 11,000,000 currently received by the contract schools in administrative cost remained constant and the formula was phased in as so stated in the legislation the weighted student until allocation would be:

FY ' 89 -- \$2,343

FY ' 90 -- \$2,323

FY ' 91 -- \$2,314

In addition, with the holdharmless provision contained in the formula as we proposed it to be, ISEP program funding would be guaranteed to be no less than the FY '87 level of \$2,230 per WSU.

Mr Chairman, we do not support taking money away from program to compensate the need for administration dollars. We feel that the formula developed is a responsible one and the Bureau is given time to develop a formula even more reflective of the actual need. By using those scenarios described above we feel that the dollars for ISEP historically have been there to adequately fund the programs our children need, while at the same time with the inclusion of the administrative cost dollars currently generated and the additional dollars needed through FY 1991, that enough money will be contained in ISEP to fund both programs at levels which are above those currently received. I hope Mr. Chairman that you will give serious consideration to the formula we are proposing and the language which will allocate those administrative funds through the ISEP formula. Please know it will help insure our stability and ultimate survival.

Before closing Mr Chairman let me comment on two additional points which are not a part of S. 1645, but which are supported by the ACTS Board of Directors. One would be the creation of a National Indian Board of Education. This Board which would contain 24 members from throughout the Indian community would serve as the policy making arm of the Department of the Interior to provide for the administration of the Department's education delivery system. The Board would hire its staff and appoint a director who would be comparable to the present Director

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of the Office of Indian Education Programs within the Bureau of Indian Affairs. This would truly be a structure which answers to the needs of local Indian education problems. It would be accountable to the Congress and would submit its appropriations request through the Department of Interior/Bureau of Indian Affairs.

I realize this may be somewhat premature, however as you recall last winter, Assistant Secretary Swimmer advocated taking the Bureau of Indian Affairs out of education delivery. This structure would do just that, but it would do it in a manner consistent with tribal sovereignty and local control. Your Committee has been given a copy of this proposal and we would be happy to respond to any questions they may have concerning it. There needs to be more work done on the concept, but we think it is very workable and ultimately we see it has the alternative to the present system.

The second point I would like quickly to address Mr. Chairman, and likewise a legislative draft has been developed and is in the hands of Committee staff, is a proposal calling for the creation of a White House Conference on Indian education. There should be no doubt in the minds of any who work in the field of Indian education that the time is right for such a conference. Questions concerning what is the federal government's responsibility toward Indian education need to be answered. What is the responsibility or the role of the federal government in insuring that Indian children receive a basic education within public schools? Certainly public schools receive a vast amount of federal resources because of the presence of Indian students. Impact Aid and Title IV together bring into public schools approximately 300 million dollars, more than is received by all of the Bureau programs. Yet, what should be the federal government's policy to insure that Indian children are receiving a quality education?

A White House Conference which would bring in experts from throughout the field of Indian education to answer the many questions which need to be addressed to insure that Indian education is alive and well in the 1990's.

Mr. Chairman, I appreciate the invitation to testify today and ACTS stands ready to assist the Committee in anyway possible to insure that a legislative proposal passes this Congress which will improve upon the present BIA education delivery system

Testimony of Dean C. Jackson
President, Navajo Community College
Tsaile, Arizona
On Senate Bill 1645

Mr. Chairman and members of the Committee I am Dean C. Jackson, President of Navajo Community College at Tsaile, Arizona. It is my great pleasure to offer my comments on Senate Bill 1645, which addresses a great educational need of the Navajos and other tribes through the establishment of American Indian Gifted and Talented Centers at Navajo Community College and Sinte Gleska College.

TITLE III, Section 303

Navajo Community College supports funding of American Indian Gifted and Talented Centers to identify talented and gifted students and establishing quality programs that will address the specific and special needs of the Indian youths. This younger generation constitutes over 50% or 100,000 of the total Navajo population of 200,000. Today, as in traditional times, these young people represent the greatest natural resources to our people. Many of our talented and gifted Navajo youths are the potential leaders of our Navajo Nation and include future scientists, doctors, artisans, and other professionals who will be the spirit and essence of our future Indian society.

Navajo Community College is chartered by the Navajo Tribe and was built in the heart of the Navajo Nation. It is a central location for the undertaking of many activities related to the operation of an American Indian Gifted and Talented Center. It has the physical plant and resources necessary to house a great number of American Indian participants. In addition, Navajo

Community College is equipped with a technological system that may provide public television on a reservation-wide basis and can facilitate a program format designed to meet the special needs of American Indian gifted and talented elementary and secondary youth. At the present time, broadcasting is done on a local basis by the Navajo Community College Television Network which is now in its third year of operation. A pending affiliation with the Public Broadcasting Services would provide access to public television programs in three states and nationally which will greatly enhance the College's television operation to meet any proposed program. Navajo Community College could easily coordinate the program dissemination of locally developed programs and national public television programs to school districts across the Navajo Reservation upon identification of these special needs students.

On the present staff of Navajo Community College are Navajo medicinemen, as well as cultural and language specialists, who serve as college instructors and researchers who could provide valuable assistance to any creative culturally-based programs. These individuals would assist a wide variety of demonstration projects that would fulfill the needs to serve our gifted and talented elementary and secondary students. Educational programs and activities that are built upon the foundation of a strong cultural self-image for Indian students have been proven successful in molding Indian youths to respect and honor their heritage while competing in the job market of a modern technological society. Navajo Community College could very well develop American Indian gifted and talented students on a year-round basis through our Honors Program for College Bound Juniors and through articulation

arrangements with local school districts. Additionally, Navajo Community College has given support for projects to improve the instructor skills of teachers and teacher aides.

Navajo Community College operates under a one-college multi-campus format. This system allows the College to cover the entire Navajo Nation. Because of this, we take the position that Navajo Community College is the higher education institution of the Navajos. Through this system we have administrative units established at all of the seven (7) branch and community campuses. This system allows us to bring education to the Navajos. It allows us to have access to potential students as participants in the Gifted and Talented Programs. In addition, research oriented faculty on our campuses have the capability to serve individual students and their family. These field sites across the Navajo Nation can facilitate the assessment and identification of the special needs of gifted and talented students. The main Navajo Community College campus and its dorm facility would provide a congenial atmosphere in which a summer academic and cultural experiential program could evolve as a strong supportive and dynamic force responsibly contributing to the overall emotional and psychosocial needs of our young people who will become our leaders.

In conclusion, Navajo Community College has played a major role in Indian higher education in the last twenty (20) years. In this period of time, existing tribal colleges have provided services and have created programs specifically for the Indian students who are academically deficient. Senate Bill 1645 adds a new educational dimension to the current efforts of Navajo Community

College and other Indian colleges.. It will definitely enhance the tribal endeavors by producing tribal leaders at an accelerated pace. Because of these reasons, we fully support Senate Bill 1645 and urge its passage so that we can go forward in addressing the urgent educational needs of all Indian people.

Testimony of the
Cheyenne River Sioux Tribe
to
the Senate Select Committee on Indian Affairs
on
Reauthorization of Title IV of the Education Amendments

September 29, 1987

The Cheyenne River Sioux Tribe appreciates this opportunity to submit testimony to the Committee on the reauthorization of Title IV - Indian Education. Our concern is over a particular provision of Title IV which limits the head count for Title IV-A funding to students receiving a free public education from their local educational agency. Because of a unique educational set-up on our Reservation, this provision works an unfair hardship on our students. We, therefore, are requesting that the applicable sections of Title IV specifically 241bb(a)(1) be modified to eliminate the hardship. The total cost to the Federal government for doing so will be minimal.

Until 1979, the BIA operated a boarding school on the reservation. In that year a flood destroyed the BIA classroom buildings. Rather than reconstructing a separate BIA school at the old and isolated site the BIA and the Tribe and the Eagle Butte School District entered into an exciting and unique experiment. The new BIA buildings were constructed near those of the School District and the two educational institutions

were fully integrated into a single cooperative school. The school boards of the two institutions entered into a Cooperative School Agreement (copy attached as Exhibit A) and formed a joint school board. The faculty at the school is composed of both BIA and LEA teachers. But rather than LEA teachers teaching LEA students, and BIA teachers teaching BIA-funded students, it was decided that the students and faculty should be fully intermingled. Every class has both BIA and LEA students and is taught by either a BIA or LEA teacher. All other activities are similarly intermingled. The schools develop an annual joint budget and jointly fund many activities.

The problem for this admirable system occurs when it is time to apply for Title IV-A funding. Under the present law only the students whose education is paid for by the LEA count towards Title IV-A funding. But it is impossible to segregate the services paid for with the Title IV-A funding just to LEA-funded students, because the students are completely integrated. As a result, the school has to stretch the Title IV-A funding to serve more than twice as many students as it is funded for. The BIA's funding does not include funds to operate Title IV-A type programs. Since all students share in the services, the effect of the present law is to cause the school to receive inadequate funding to properly serve its full student body. For example, when the change was made restricting funding only to LEA students, the cooperative school was forced to drop a special and effective program of

working with parents to reduce the school's very high absenteeism and drop-out rates.

For this reason, the Tribe requests that Title IV be amended to correct the problem. We are suggesting two alternative ways this can be done. The first option is the most limited and most tailored to our situation. It would amend Section 241bb(a)(1) to require that the Secretary count BIA-funded students along with LEA students when they attend a cooperative school in which the faculty and the classes are fully intermingled. The financial impact of such an amendment should not exceed \$100,000 a year.

The second option is to change Title IV-A to make all BIA students eligible to be counted for Title IV-A purposes, whether they attend BIA schools, cooperative schools such as ours, or any other form of school. The present situation is both unfair and harmful to the principles of Indian self-determination. Under existing law, contract schools are eligible for Title IV-A funding even though they are fully funded by the BIA. Yet, BIA schools or cooperative schools are not eligible. This provides a financial incentive for tribes or tribal organizations to contract for their schools under the Self-Determination Act. Yet, one of the basic principles of that Act is that the Federal government should be neutral; it should provide neither an incentive nor disincentive to contracting. Yet, Title IV-A violates that principle. For this reason, we are requesting, as an alternative to our

tailored amendment, that Title IV-A be amended to make all BIA-funded students eligible regardless of the kind of school they attend. Since BIA students compose only 10% of the total Indian student population, the proposed amendment will not have a major financial impact. Even if no funding is provided, it would only cause existing grantees to suffer a 10% reduction in their grants. We believe this is manageable, particularly since the present situation violates basic self-determination principles.

Thank you for this opportunity to present this testimony.

Proposed Bill Language**Providing Title IV-A Funds to Cooperative Schools**

Section 241bb(a)(1) is amended by changing the last period to a semicolon and then adding the following language:

"Provided that, in making such determinations for cooperative schools, as that term is defined below, the Secretary shall count all Indian children attending the school, including those children whose costs are paid for by the Bureau of Indian Affairs. A cooperative school is one that is operated jointly by the BIA and the LEA, has a joint BIA/LEA school board, and in which students being provided a free public education by the local educational agency and students whose costs are paid for by the Bureau of Indian share the same teachers and attend common classes.

Proposed Bill Language

Providing Title IV-A Funds to Bureau of Indian Affairs
School or Students at Other Schools
Whose Tuition is Paid by the Bureau of Indian Affairs

Amend Section 241bb-1 by adding the following
subsections: "

- (2) Notwithstanding any other provision of law, any school operated by the Bureau of Indian Affairs, either individually or in cooperation with a local educational agency shall be considered a local educational agency for purposes of Section 241bb(a).

CHEYENNE-EAGLE BUTTE SCHOOL
COOPERATIVE SCHOOL AGREEMENT

This agreement entered into the 9th day of March, 1987, between the Bureau Indian Affairs, Cheyenne River Agency Education Office, Cheyenne-Eagle Butte 95-561 School Board hereinafter referred to as "Agency" and the Eagle Butte District 20-1, Dewey County, South Dakota hereinafter referred to as "District," as authorized by 25 U.S.C. 13, in accordance with 25 U.S.C. 296, 25, C.F.R. 31.1-131.3, 33.4 (a) and South Dakota compiled laws 13-15-7.

Pursuant to these provisions, THE PARTIES HERETO EXPRESSLY AGREE TO THE FOLLOWING GENERAL PROVISIONS:

1. The Agency and the District agree that this contract and provisions herein shall constitute an agreement for the education of both the elementary and secondary school pupils of the District and the Agency in which both Federal and District funds, facilities, equipment and other property shall be utilized.
2. This agreement shall be effective during the 1987/1988 school year, beginning July 1, 1987 and ending June 30, 1988.
3. If there is to be a renewal of this agreement it shall be agreed upon by March 1, preceding the school year to which it shall apply. If no agreement can be reached satisfactory to the parties herein within sixty (60) days after March 15, no relationship shall exist between said parties.
4. The provisions of this agreement are conclusive and define the full extent of each parties rights, duties and obligations hereunder. A material violation of any provision of this agreement by either of the parties shall give the non-branching party a right of termination of the rights and obligations contained herein.
5. If a material violation occurs, this cooperative agreement cannot be terminated until the end of the cooperative agreement period. This would allow both parties time to reach a mutual agreement or to rectify the violation prior to entering another cooperative agreement.
6. This agreement is subject to modification by mutual written consent to the parties hereto.

THE PARTIES FURTHER AGREE TO THE FOLLOWING SPECIAL PROVISIONS:

7. The Agency and District shall agree to select the 95-561 School Supervisor and the District Superintendent to serve under the Combined 95-561 Board and District Board conducting official school business sitting as one Board. The line of authority and delegated duties shall be as prescribed on the attached organizational chart.

Cooperative School Agreement 1987/1988

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- a. The Combined Board shall be responsible for school administration and shall establish all rules and regulations, and policies.
- b. The Combined Board shall direct all expenditures of funds from whatever source, with the exception that each respective Board shall be responsible for the legal expenditures of funds received by the respective entity. The 95-561 School Supervisor shall be responsible for Agency legal obligations. The District Superintendent shall be responsible for District legal obligations.
- c. The 95-561 School Supervisor shall be responsible for the physical maintenance operation and up-keep of Agency facilities. The District Superintendent shall be responsible for District 20-1 facilities.
- d. The Combined Board shall be responsible for selection, establishment and supervision of the school curriculum in a manner that satisfies Title XI of Public Law 95-561, Federal Regulations published in accordance with this Law, and South Dakota codified laws.
- e. The 95-561 School Supervisor/District Superintendent shall be responsible for the acquisition, management, control and distribution of all property material and supplies purchased from Agency/District funds needed for operation of the school. They shall expend such funds in accordance with the approved budgets of each respective Boards.
- f. The Combined Board shall exercise authority, through the 95-561 School Supervisor/District Superintendent on all school activities and functions that affect students. Daily supervision of all personnel in the school shall be exercised by the 95-561 School Supervisor/District Superintendent subject to Bureau personnel regulations, State Laws and established Combined Board Policies.
- g. Each entity, Agency and District shall, under an established Combined Board Transportation Plan, be responsible for the transportation of students to and from school by Agency and District vehicles. Each shall be responsible for their respective vehicle maintenance and employment of drivers.
- h. The 95-561 School Supervisor shall be responsible for operation of the Dormitory and Agency Dining facility. The District Superintendent shall be responsible for the operation of the District Dining facility.
- i. Health Services shall be procured from the appropriate source: School Nurse, Indian Health Service, and other sources available to the District of Agency.
- j. Administration of all extra-curricular activities; athletics or special activities shall be under the direct supervision of the Assistant Principals or as delegated to the Activities Director.

Cooperative School Agreement 1987/1988

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Coaching duties shall be considered duties beyond the scope of the Agency or District employees regular teaching contract.

- k. The Students Rights & Responsibilities Code shall comply with all applicable laws.
 1. Student expulsion shall be by authority of the Combined Board. Changes in the Student Rights and Responsibilities Code shall be by approval of the Combined Board. Students records will be kept in accordance with Title 45, Subtitle A, Part 99, "Privacy Rights of Parents and Students," as published in the Federal Register, Vol. 41, No. 118. Thursday, June 17, 1976.
8. The Combined Board shall sit as one Board to review and approve all certified personnel and coaches. The Combined Board shall sit as one Board to review the Agency/District budgets. Legal matters of each entity shall be approved by the respective Board, or as delegated to the 95-561 School Supervisor/District Superintendent.
9. The Combined Board shall meet at the time and place to be set by the Combined Board. All Board members may take part in discussion of all board business, but voting on District bills, District personnel action and expenditures shall be voted on only by the District Board members as a matter of legality. The 95-561 Board members shall vote when financial or personnel matters pertain to the Agency school and both Boards sitting as the Combined Board shall vote on all policy matters. The 95-561 School Supervisor/District Superintendent shall represent the school when the Combined Board is in session and will attend all regular and special meetings of the Combined Board.
10. Policies affecting the student body shall be jointly discussed and approved by the Combined Board.
11. Any and all revenue of the District's, as budgeted by the District, after deduction of the cost of providing educational services for Lantry and Ridgeview Schools shall be expended by the District Board as approved during budget hearings, on the Cheyenne-Sage Butte School. Any and all revenue of the Agency, as budgeted by the Agency, shall be expended by the Agency as approved, in accordance with Bureau of Indian Affairs regulations. The 95-561 School Supervisor/District Superintendent shall make available the respective budgets.
 - a. The District funds mentioned herein shall be expended in accordance with the established operational plans and budget of District 20-1.
 - b. The Agency's ISBP funds mentioned herein shall be expended in accordance with the established operational plans and budget of the 95-561 School Board.

Cooperative School Agreement 1987/1988
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12. This District/Agency is charged with the affirmative duty of applying for and making available for expenditure those funds for which it may be eligible for under State or Federal Law. The funds so obtained shall be considered by the Combined Board in establishing the amount of each respective operating budgets. All funds obtained from said source shall be expended for school operations during the school term for which they were sought. In the event, a surplus exists at the end of the school term, the surplus shall be identified, reported and obligated in accordance with applicable law. Applications for funds obtained throughout the District/Agency school shall be presented to the Combined Board for review, comments and recommendations.

Upon the receipt of any documents from State and Federal sources approving or disapproving financial assistance in the form of contracts, grants or other funding, said information shall be presented to the Combined Board as an assistance in total school planning and budgeting.

The monthly financial reports of the District/Agency will be made available to the Combined Board by the respective representative.

No distinction shall be made between Indian and non-Indian students in the receipt of general educational services at the Cheyenne-Eagle Butte School, provided however, that nothing in this agreement shall be in any way preclude provisions of specific programs to Indian or non-Indian children in accordance with tribal, state or federal law.

13. No distinction shall be made between employees of the Agency and the District in any matter pertaining to employment at the Cheyenne-Eagle Butte School with the provisions that any law pertaining to Indian preference shall be given full force and effect.
14. Official representatives of the Division of Elementary and Secondary Education of the State of South Dakota, CRST Council Members, and the Bureau of Indian Affairs shall be permitted to visit the school at any time for observation, consultation or evaluation.

The Agency/District shall furnish records and reports as it is necessary to enable the aforementioned representatives to evaluate the education programs.

15. No elected official or employees of the State/Federal government shall be admitted to any share or part in any contract made hereafter or derive any monetary benefits therefrom.
16. Educational personnel, either Agency or District shall be given priority consideration in housing assignments by Agency or District.
17. All minutes of the District/Agency will be made available to the Combined Board by the respective representative.

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18. The 95-561 School Supervisor and District Superintendent are hereby delegated discretionary authority to act in the best interests of the Combined School Board in the event that major matters pertaining to the overall operation of the Cheyenne-Eagle Butte School arise and the Combined Board is unable to meet to address the issue providing that prior to implementing this discretionary authority both the 95-561 School Supervisor and District Superintendent have discussed, concurred and documented the course of action to be taken. The 95-561 School Supervisor and District Superintendent will report to the Combined Board at the next regular meeting any action(s) they have taken under the terms of the discretionary authority provision.

TESTIMONY OF TOHONO O'ODHAM NATION CHAIRMAN
ENOS J. FRANCISCO, JR. BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS REGARDING THE INDIAN
EDUCATION AMENDMENT* OF 1987

WASHINGTON, D.C., SEPTEMBER 29, 1987

* * * *

My name is Enos J. Francisco, Jr and I am speaking to you as the Chairman of the Tohono O'odham Nation.

I want first to express the deep appreciation of the Tohono O'odham people for the work that this Committee and its staff have done in preparing the Indian education amendments. Your effort lays the foundation for better federal schools and a better future for Tohono O'odham children.

I. BACKGROUND

On the Tohono O'odham reservation, there are presently four federal schools enrolling a total of approximately 1,052 students. All of the schools are operated directly by the BIA under the office of the Agency Superintendent for Education in the town of Sells, although since 1983 the official policy of the Nation has been to place the schools under a 638 contract system. Santa Rosa Ranch School, Santa Rosa Boarding School, and San Sisto'n School serve grades kindergarten through 8 and have approximate enrollments of 122, 358, and 320 respectively. The fourth school is the new Tohono O'odham High School, which is adjacent to the San Sisto'n elementary site and has a current enrollment of approximately 252.

These schools serve the most remote reaches of our reservation and lie generally outside the service area of the Tohono O'odham Nation's public school district. The school sites are separated from each other and from the office of the Agency Superintendent for Education by an average distance of over 60 miles.

II. THE S. 1645 SELF-DETERMINATION GRANT

I want to make it clear that people are working hard in our BIA schools and some important progress is being made.

But the blunt reality is that there is no hope of having the effective school organizations that we are entitled to so long as the schools are administered directly by the BIA and their funding is held at current depressed levels. What it boils down to is that Assistant Secretary Swisher was right last year when he said that the BIA bureaucracy and its restrictive rules and regulations prevent the schools from using effectively their resources.

It is for this reason that my office, following the O'odham Comprehensive Education Plan, supports strongly the self-determination grant proposal in S. 1645. We've got to eliminate the federal bureaucracy from the schools and the self-determination grant will do this more appropriately than the P.L. 93-638 contract system.

I am concerned, however, that in its present form the self-determination grant proposal will not enable the Tohono O'odham to implement a school organization concept

which we have developed over the last two years and for which we now seem to have consensus in tribal government. I'm referring to the concept of a "unified tribal school system" in which the four Tohono O'odham school sites and the office of the Agency Superintendent for Education are funded under a contract or grant arrangement. An organization chart that shows the outline of the idea is included with this testimony as an exhibit. I'll be referring to the chart in the rest of my remarks.

As shown in the chart, the framework we have in mind follows closely the pattern of the state public school system. In the state system, REGULATION of the schools is accomplished by the state legislative process operating through the Arizona Department of Education, and OPERATION of the schools is carried out by locally controlled, independent school districts. Our proposed framework maintains this distinction by giving regulatory responsibility to tribal government while assigning the role of operating the four school sites to a non-profit school corporation.

In our thinking, REGULATION involves establishing general policies and standards and enforcing them in the school system. Implicit in this concept is the notion that the proper role of tribal government is to stimulate school improvement and provide accountability. Examples of tribal regulatory functions include a tribal accreditation system, criteria for financial management and personnel evaluation and compensation systems, general curriculum and instructional program standards, and rules for the open conduct of school board and school site council meetings.

OPERATION means all activities necessary for the day to day functioning of the schools. Hiring, staff performance evaluations, curriculum development, accounting, and purchasing are examples.

The "unified tribal school system" accomplishes a number of important objectives for the Tohono O'odham:

First, it places responsibility for setting school standards and enforcing them in the tribal government. For us, any other approach is unfaithful to the concept of Indian self-determination.

Second, it provides that school regulation and school operation will be carried out by separate entities. A fundamental problem in the existing Bureau operated system is that the same entity, led by the office of the Agency Superintendent for Education, is required to regulate and operate the schools at the same time. This is a prime cause of the stagnation and unaccountability that we see now.

Third, placing responsibility for operating the school system in a non-profit corporation which is independent of tribal government will increase efficiency. The school corporation will be able to develop management and accounting expertise appropriate to its purpose and will be insulated from tribal political influences.

Finally, our framework implements the principle of "school based management." Both our own experience and effective schools research show that the power to improve educational opportunity lies primarily with the members of the school building community, not with authorities (whether they be the central school administration or the tribal

government) that are removed from the school site. Accordingly, our framework would establish at each school building a "Site Council" to govern the school in local matters.

....

As shown in the chart, one way to set up the unified tribal school system is to award to the Nation a master contract or grant. The master contract or grant would thereafter be split into two parts. The smaller part (by far) would be kept by the tribal government to support regulation of the schools. The larger part would be subcontracted or granted to the corporation by the tribal government in order to operate the school sites and the central administrative office. For the Tohono O'odham, this structure might - but need not - eventually evolve into an arrangement in which there are two separate contracts or grants, one for regulation running from the BIA to the tribal government, the other for operation running from the BIA to the school corporation.

...

My basic concern with the proposed Indian education amendments is that they do not clearly authorize the "unified tribal school system" I have described. The BIA has already taken the position that with respect to the existing 638 contracting option, the tribal school system we envision is not allowable. We need to eliminate any doubt in this area, both with regard to the self-determination grant legislation and the pending amendments to P.L. 93-638.

Specifically, I ask the committee to consider making it clear in statute that for either the self-determination grant or the P.L. 93638 contract:

1. IT IS ALLOWABLE TO ASSIGN REGULATION OF THE SCHOOLS TO TRIBAL GOVERNMENT WHILE ASSIGNING OPERATION OF ALL SCHOOL SITES AND A CENTRAL ADMINISTRATIVE OFFICE TO A TRIBALLY CHARTERED SCHOOL CORPORATION.
2. IT IS ALLOWABLE TO INCLUDE THE WHOLE OF THE OFFICE OF THE AGENCY SUPERINTENDENT FOR EDUCATION.
3. INDIRECT OR ADMINISTRATIVE COSTS ASSOCIATED WITH BOTH THE TRIBAL REGULATORY FUNCTION AND THE AGENCY EDUCATION FUNCTION WILL BE CALCULATED AT A REALISTIC LEVEL AND MAY BE ALLOCATED RESPECTIVELY TO THE TRIBAL GOVERNMENT AND THE OPERATING CORPORATION.

III. ADDITIONAL COMMENTS RESPECTING S. 1645 SELF-DETERMINATION GRANTS AND OTHER MATTERS

1. Section 207(b) of S. 1645 should be amended to add tribal governmental approval as a precondition for the automatic renewal of a self-determination grant to a tribal organization.

2. S. 1645 makes sense only if it succeeds in establishing truly unrestricted grants. In order to keep the grant power of local control for school improvement, we must keep to a bare minimum external requirements that impair the ability of local authorities to act directly based on their own analysis of what is required in the circumstances.

There will be those who say that external restrictions are necessary for accountability. For the Tohono O'odham there are two answers to this. First, we know from direct experience with Arizona's "block grant" system for public school funding that freeing the hand of local authorities produces the results that we want. Second, by its very nature the unified tribal school system we propose will establish accountability structures ~~as a result of our tribal political system~~. These local structures will be far more effective than anything imposed from the outside.

Based on our experience with Arizona's public school grant system, a number of elements must be present for the grants to qualify as "unrestricted." In the case of a unified tribal school system such as I have described for the Tohono O'odham, the grantees should at least be able to:

- a) Establish funds and subfunds for operations and capital spending.
- b) Establish its own operating and capital budget formats and modify those formats at any time without external review or approval.
- c) Budget funds in any amount to any line item within either the operating or capital budget without external review or approval.
- d) Rebudget funds in any amount and at any time during the grant period to any line item within either the operating or capital budget without external review or approval.
- e) Move funds from the operating budget to the capital budget or vice versa at any time and in any amount.
- f) To the maximum possible extent, acquire capital items, goods, and services free of federal contracting, procurement, and personnel laws.
- g) Carry over unexpended funds from one grant period to another without limit or penalty.

I appreciate very much the effort to include many of these "unrestricted grant" features in S. 1645. Given the BIA's demonstrated antipathy to local control, however, I am concerned that S. 1645 does not go far enough in protecting the self-determination school from external interference. It seems that every time the statutes give us room to run, the Bureau steps in with rules and regulations that tie us down. Accordingly, I ask the Committee to consider placing some additional protections in the proposal.

For example, Section 204 could define the grant to include the unrestricted grant features I have listed here. This would eliminate any argument that the BIA has implied authority to paternalize the self-determination grant school by regulating budgeting and expenditure processes.

Additionally, Section 211 could be modified to prohibit the BIA from taking any action, including but not limited to the promulgation of regulations, which would have the effect of limiting the listed "unrestricted grant" features.

Finally, the second sentence of Section 211 could be modified to read as follows: In ~~all other matters relating to grants under this title, including but not limited to the details of applications, planning, development, investigation, budgeting, spending, evaluation, and evaluation, the Secretary shall not issue regulations.~~

2. In the preparation of this testimony we have been unable to determine whether the "unified tribal school system" contract or grant should encompass any functions

presently carried out at the BIA's Phoenix Area Office. If this is the case, additional accommodations in the amendments may be required.

4. A multi-school grantee under the current version of S. 1645 is restricted from diverting more than 5% of a school's ISEP allotment from the school site. Where a true unified tribal school system such as we propose is established, it is inappropriate to place such a restriction in federal statute. Locally created checks and balances will be sufficient to protect the interests of individual schools in the multi-school system. Tying the hands of the local authorities with the 5% limit may prevent the highest and best use of school resources in certain circumstances and defeat the purpose of the self-determination grant.

5. To avoid any confusion on the point, the provisions of subparagraph (a) of 25 U.S.C. Sec. 450(?) authorizing the Secretary to permit use of federal facilities and equipment by P.L. 93-638 grantees should be made applicable to self-determination grantees. As presently drafted, S. 1645 (at Section 209) indicates that no part of 20 U.S.C. Sec. 450(?) applies to the self-determination grant.

6. H.R. 5 contained a provision, missing in the Senate version, requiring the Secretary to pay the self-determination grant amount in two installments, one-half before October 1 and one-half before January 1. This provision should be restored to the Senate version. Severe cash-flow disruptions are a virtual certainty without it.

7. A provision allowing carry over of up to 15% of the grant amount for Bureau operated schools was a part of H.R. 5 when it passed the House on May 21 but is now missing in the Senate version. The carry over provision should be restored, with a change to make it clear that 15% may be carried over each year without regard to the size of previous carryovers. Further, any doubt that fund balances in a self-determination grant or contract school lawfully can be carried over should be eliminated.

8. Section 108 of S. 1645 (Local Procurement) should be expanded to exempt contracts with consultants on the same terms as contracts for the acquisition of supplies and equipment.

9. My office supports the provision of S. 1645 which would allow waiver of Indian preference for educator position ~~REQUIREMENTS~~ in Bureau operated schools as well as employees.

S. 1645 should, however, be clarified to allow a tribal government to develop its own Indian preference requirements with respect to self-determination grants. This tribal option is currently available for P.L. 93-638 contracts. See, 25 CFR Pt. 271.44.d.

IV. ADEQUACY OF FINANCIAL RESOURCES IN THE BIA SYSTEM

There is great promise in the Indian education amendments we are considering today, but that promise will be false unless something is done to deal with the problem of inadequate funding for the federal school system. A comparison with the public school system that serves the eastern half of the Tohono O'odham Nation will show just how big the funding problem is.

The gross salary for a starting teacher in our BIA system (\$15,473) is \$4,327 less than for a starting teacher in our public school district (\$19,800). And the situation doesn't get any better for educators that stay in the system. A teacher at the "top end" of the BIA salary schedule (\$24,064) makes \$6,286 less than a "top end" public school teacher (\$32,350). The differences in the salaries offered school administrative personnel are proportionally as large as for teachers. And there are differences of the same magnitude in the capital funds that are available in the two systems.

1. Gramm-Rudman And Adequate Funding For The Federal Indian School System

It seems that soon the Gramm-Rudman deficit control law and its "automatic across-the-board" budget cuts will be brought back to life. In my view this is the most serious long-term threat to the federal Indian schools.

I remind the Committee that the draft of the original Gramm-Rudman law contained a provision exempting BIA education from the automatic across-the-board budget cutting process in the same manner as Social Security, Medicaid, Food Stamps, AFDC, SSI and other selected programs are exempted. Just before Congress' final vote on the bill two years ago, however, the language was altered to place Indian education on the chopping block along with most other federal programs.

I urge this Committee to undertake to place an Indian education exemption into any new Gramm-Rudman law that may emerge. One option is to exempt BIA Indian education from the automatic budget cutting process while simultaneously providing that Indian education expenditures do not add to the projected deficit figure that is used to calculate the amount by which programs subject to the automatic cutting process are reduced. ~~This approach differs from the existing exemption because it does not transform essential Indian education expenditures into savings cuts for non-exempted programs.~~

2. S. 1645 And Adequate Funding For The Federal Indian School System - Salary Differentials

My office strongly supports the intent of Section 1140(C) of S. 1645 to deal with the issue of public school salary comparability by enacting salary differentials. But the proposal has several problems in its present form.

First, as presently written the proposal allows only Bureau operated schools to seek salary adjustments. The proposal must be expanded to place contract schools (and "self-determination grant" schools) on an equal footing. This could be done by adding a provision to the ISEP allotment formula (25 U.S.C. Sec. 2006) directing the Assistant Secretary to award an increment in the contract or grant school's ISEP allotment in the same manner that the proposed Section 1140(C) directs him to award post differentials for Bureau operated school employees.

Second, the proposal must specify what the public school comparison group will be. Unless criteria for selecting the comparison group are stated precisely in the statute, the Assistant Secretary could force inappropriate comparisons and defeat the purpose of the comparability initiative. One option is to specify that a school board requesting a differential say, in addition to other choices which may be available.

use for comparison public school salary levels which exceed a given percentage, say seventy-five per cent. of all public school salary levels in the state.

Comparison with the upper quarter of public schools will assure that BIA salaries are competitive on a statewide basis. This, in turn, will allow the school to draw from a wider pool of applicants and give it the resources to retain good teachers who might otherwise leave the isolated reservation site in favor of an urban center.

A second reason for comparison with the upper quarter of public schools is that the State of Arizona has, after being sued several years ago by the Indian public schools, recognized that extra funds are needed because of the extra cost factors in Indian education. The extra funds are provided through the "25% Indian add-on" in the federal impact aid program and authorized for expenditure by way of a special exception to the state's school district expenditure limitation for Indian schools. These extra funds have tended to increase Indian public school salaries in Arizona and are one reason for the BIA/public salary differential I have described for the Tohono O'odham. Unless the methodology for adjusting BIA salaries allows for the Indian public school salary structures in this state (along with salary structures in non-Indian districts which, because of favorable circumstances, are able to fund higher per pupil spending), the federal schools will never have enough resources to do the job.

Third, the amount of the salary adjustment should not be limited to 25% of the existing base compensation [25 USC Sec. 2011(h)(3)] but should instead be the amount needed to achieve precise parity with the comparison group. If the 25% limit were applicable, for example, there would still be for "top end" teachers a difference of \$2,270 between the BIA and the Indian Oasis public school serving the Tohono O'odham.

Fourth, unless otherwise requested by the school board, the Assistant Secretary should be prohibited from discontinuing or decreasing a salary adjustment until after one full school year following the school year in which the adjustment is given. As presently drafted S. 1645 allows the discontinuance or decrease to take effect "at the beginning of a school year." [S. Sec. 1140C (b)(2)]. Under this provision a school's staff could leave for the summer with an expectation of receiving in the coming year an upwardly adjusted salary and return in the fall to find that the adjustment had been eliminated.

3. S. 1645 And Adequate Funding For The Federal Indian School System - Personnel Compensation Comparability Study

The compensation comparability study called for in Section 1140(C) of the Senate proposal is important and long overdue. My office, however, has three concerns with the proposed language.

INADEQUATE BENCHMARKS. As presently written, the proposal creates two benchmarks for comparing BIA salaries. Salaries in public schools "nearest the Bureau funded schools" are one benchmark, "state average salaries" are the other. These benchmarks will mislead. It is false to assume that a comparison school's salary structure will take into account the extra cost factors unique to Indian education simply because it is located "nearest" the BIA school. By the same token, "state average salaries" will fail to reflect the real funding needs of Indian education because the Indian circumstances are not "average."

The statute should specify a comparison group that is truly representative of the funding requirements of schools serving Indian children. As was the case with the salary differential proposal previously discussed, one option is to require that the comparability study use for comparison public school salary levels which exceed a given percentage, say seventy-five per cent, of all public school salary levels in the state.

Section 1140(C) Study. As presently conceived, the proposed study will compare compensation only for the BIA positions that currently exist. There is a larger question, however, which must be addressed. To what extent are the overall operating resources of the BIA funded system equivalent to the overall operating resources of the public school system?

To answer this question, the study should examine whether positions considered necessary in the public school system are missing altogether from the BIA schools due to lack of funds. For example, the Indian Oasis public school district has enough spending capacity to fund the following positions, none of which is found in our BIA school system even though student enrollment in the two systems is almost exactly the same: Assistant Superintendent/Curriculum Coordinator, Bilingual Education Coordinator, a Professional Business Manager (management information officer), and a family-community relations officer. The public school system also has substantially more counselor and classroom aide positions and a significantly larger program of in-service training and development for the professional staff. Finally, the public school is able to provide more comprehensive instructional support functions, such as transportation for after school activities and field trips.

Performance Based Compensation. The Section 1140(C) study should be expanded to include an analysis of the cost and feasibility of implementing, for both instructional and administrative personnel, true performance based compensation systems in Bureau operated and Bureau funded schools. Many states, including Arizona, are implementing "career ladder" and other performance based compensation systems after having determined that they are necessary to achieve the objective of educational excellence. (See, e.g., Ariz. Rev. Stats. 15-913.)

My office strongly supports the Arizona career ladder initiative and believes something like it should become a part of the federal Indian school system. We need to recognize that the existing federal merit system is inadequate for schools because the merit increases are a) too small, b) blended with automatic step increases which are given without regard to merit, and c) not tied to specific aspects of the school operation, such as "mentor" or "lead" teacher progress, that will improve instructional outcomes. Establishing true performance based compensation will require a revamping of the personnel system in Bureau operated schools and, for both Bureau operated and Bureau funded schools, more money.

4. 5. 1645 And Adequate Funding For The Federal Indian School System - Construction, Renovation and Equipment

The comparability study called for in Section 1140(C) of the Senate proposal should be expanded to consider disparities between the BIA and public school systems with respect to capital outlay funding.

In addition to the usual capital outlay concerns such as building construction, textbooks, or buses and vans, the study should consider the relative availability of funds for technologies which will increase school effectiveness (computer systems for administration, classroom management and instruction, interactive video and satellite links for remote instruction, dictation and photocopying machines, etc.).

As was the case with the capital outlay study pertaining to funds for operations, the review of capital outlay responsibility should consider public schools having capital resources in excess of a given percentage, say seventy-five percent, of all public schools in the state.

Additionally, the study should consider options for dealing permanently with the chronic shortfall of building construction and renovation funds in the BIA system. This is a bedrock issue for the federal Indian schools and its solution will require us to break with old patterns. One possibility, by way of example only, is to emulate the program under which the United States Department of Education underwrites a privately operated College and University Facility Loan Trust. The trust sells long-term bonds on the public market; the bonds are secured by the federal underwriting; the proceeds of the sale are used to construct facilities for universities.

The College and University Facility Loan Trust's latest bond issue on September 23 was for \$126,995,000.

. . . .

On behalf of the Tohono O'odham people, I thank the Committee for this opportunity to testify.

END

S. 1645

THE INDIAN EDUCATION AMENDMENTS ACT OF 1987

STATEMENT OF THE NAVAJO NATION

Prepared for Submission to:
Senate Select Committee on Indian Affairs
September 29, 1987

This statement has been developed by the Navajo Nation in preparation for the hearing being conducted by the Senate Select Committee on Indian Affairs on S. 1645, The Indian Amendments Act of 1987. The positions taken in this statement were developed after extensive consultation and analysis with representatives of the governing boards of BIA and tribally controlled Navajo schools in the Navajo Nation. Thus, while the position represented is that of the Navajo Nation, expressed by the Navajo Tribal Government, it represents a developing consensus among Navajo educators and governmental leaders concerning the appropriate path which BIA funded education should take if it is to more effectively serve the Navajo people and all Indian people.

S. 1645, and its companion legislation in the House "Representatives, H.R. 5, Title VIII, represent a Congressional response to persistent problems which exist within the BIA funded school system. The Navajo Nation has been addressing these problems for many years, working with representatives of our BIA school boards and contract school boards to obtain the commitment, services and involvement which we need within our BIA funded schools. Together we have sought adequate fiscal support, sound academic programs, responsiveness to the special programmatic needs of our children, program stability, adequate facilities and respect for tribal education laws and policies. In particular, we have sought a commitment from the Bureau of Indian Affairs and its Office of Indian Education Programs to work with the Tribe and local school boards in developing an appropriate system of education for our children.

In these efforts to work with the Bureau of Indian Affairs and the Office of Indian Education Programs we have frequently been frustrated by the unwillingness to make a commitment to improve these schools, or even to continue to operate them. We have encountered inequities in funding, failures of facilities maintenance, inability to incorporate tribal concerns into the academic program, decisions made without our involvement, excessive bureaucratic requirements and inadequate administrative support. As a consequence we, and other Indian tribes and education organizations have looked to the Congress in this year when many education laws are undergoing a comprehensive reauthorization, to provide us with the legislative support which we need to make the goal of Indian control of Indian education a

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reality.

It is clear from reading both S. 1645 and H.R. 5 that Congress has heard us and that substantial reforms are now possible in the BIA funded education system. We applaud Senator DeConcini and the Senate Select Committee on Indian Affairs for addressing in such detail and with such consideration the needs of BIA schools and tribally controlled schools. We also applaud the efforts which have been made by the authorizing committees both in the Senate and the House of Representatives to involve tribes and Indian organizations in the development of this legislation.

In reviewing the proposed legislation with our local BIA and contract school associations, the Navajo Nation has been guided by certain general concerns and principles:

1. We have sought a firm commitment to the continuation of the BIA funded school system as an ongoing part of the trust responsibility of the government of the United States toward Indian nations and Indian people.

2. We have sought a commitment from the BIA and from the Congress to provide a high quality, culturally appropriate education in these schools.

3. We have sought to assure that Indian Tribes exercise the greatest possible oversight and authority over the conduct of education in the BIA funded schools serving tribal members.

4. We have sought to assure that the provision of educational services does not favor BIA operated schools over tribally controlled schools or tribally controlled schools over BIA schools, but allows Indian tribes to look to either kind of school to meet the needs of the Tribe's children, as the Tribe may determine most appropriate.

5. We have sought to eliminate unnecessary red tape in the operation of tribally controlled schools while assuring that these schools are accountable to the tribes and children they serve.

6. We have sought the establishment of a meaningful right of consultation in Indian nations and organizations, under such guidelines and requirements as will assure both the fact and the effectiveness of our participation in developing the future direction of BIA funded education.

The proposed Senate Bill, S. 1645, addresses these concerns on many levels. In most cases, we have supported the basic design of the legislation and much of the specific language. We have, however, developed some suggestions for improving the legislation to conform more fully with the guiding principles stated above.

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We believe that the process of review we have undertaken, and the level of involvement from our local school board representatives which we have obtained has produced a number of concrete suggestions for strengthening this legislation. This is particularly so in the areas of parity between BIA and tribally controlled schools in regard to new starts and expansions, provision for administrative costs for tribally controlled schools, accountability of tribally controlled schools, and, especially, in the area of tribal governance and oversight of education in BIA and tribally controlled schools.

We support the provisions of S. 1645 which prevent the Secretary of Interior from closing, consolidating, curtailing or transferring any existing or authorized BIA funded school without the approval of the tribes involved or the specific authorization of the Congress. A specific statement such as this is essential to attract qualified career-minded teachers and administrators into the BIA funded school system, and to reassure local communities and the parents of students in these schools.

We support for the most part the provisions of the Bill which secure key BIA education regulations from amendment or repeal for the present time. We do, however, recommend that the regulations in 25 CFR part 40 not be included in this general prohibition. The Navajo Nation has recently expended considerable effort reviewing the proposed BIA higher education financial assistance regulations. With other tribes and Indian organizations, we have raised certain objections to these regulations. We do feel, however, that we have proposed some workable corrective language for those regulations and that, regardless of what happens with the current proposed regulations, some amendment of the existing regulations is essential if BIA scholarship funds are to serve the students who most need them. Beyond this, we do support the freeze on other key BIA regulations, particularly the policy regulations, as an appropriate means of "buying time" while BIA conformance to the new consultation requirements is tested over the coming year.

We support strong and explicit requirements for BIA consultation with Indian tribes and organizations. We have, however, proposed new language to simplify the formal consultation process and to make specific provision for BIA consultation with individual tribes and tribal organizations in regard to matters which affect their schools.

We do support provisions to upgrade salaries of education personnel in BIA funded schools and to study the degree of parity between salaries in BIA and public schools.

We support statutory language providing for new school starts and program expansions. We have proposed, however, new language incorporating both the general provisions in Title I on new starts and expansions and the language in Title II on starting or

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expanding tribally controlled schools. We have then made this language equally applicable to requests to start or expand BIA schools and requests for new or expanded tribally control schools. Our rationale is that Indian tribes themselves should determine whether their unmet needs can best be served through a tribally controlled school or a BIA school. They should not be compelled to seek new services through starting or expanding a tribally controlled school simply because the law on starting new tribally controlled schools is so much more favorable than the procedures for starting new BIA schools.

We support the basic framework providing intergovernmental grants for tribally controlled schools. We have, however, developed a number of concrete suggestions for making the newly proposed grant system more accountable and for expressing in unmistakable terms the legitimacy of tribal government oversight of tribally controlled schools under this system. We support a statutory formula for administrative costs for tribally controlled schools. However, we have rejected provisions which H.R. 5 contained which could have impaired ISEP funding to BIA schools in order to pay for administrative costs. We also support amendments to the formula in H.R. 5 which we believe will make it more workable and financially manageable.

We support the concept of continuing authorization for tribally controlled schools. However, we have suggested language to strengthen and clarify the requirements of "satisfactory performance" by a tribally controlled school. We have also proposed language to make clear that the tribe authorizing a tribally controlled school has continuing jurisdiction to review, evaluate and reconsider its authorization for a tribally controlled school and to subject tribally controlled schools to the requirements of tribal laws, including education laws and standards.

A particularly important amendment which we have developed would make it possible for a tribal government to seek an intergovernmental grant to operate as a tribal education agency comparable to a state education agency in regard to BIA funded schools serving the tribe. This would be accomplished by operating under grant Agency education functions and those Area and other BIA education functions above the local school level which are comparable to the functions performed by a state education agency. In connection with this proposed amendment, we also recommend that language from H.R. 5 setting aside funds under Title IV, Part B for the development and improvement of tribal departments of education be incorporated into S. 1645. The Title IV funding would be essential to assist tribal governments in planning for and setting up the tribal education agency structure and programs which would then be operated under the intergovernmental grant.

Indian tribal governments must be both authorized and expected to take the lead in improving the quality and relevance

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of education in the BIA funded school system. This was, we realize, part of the rationale behind the Assistant Secretary of Interior's initiative to transfer control of BIA schools to tribes. However, the Assistant Secretary's initiative, rather than EMPOWERING tribal governments, attempted to DICTATE to them the nature of their involvement with and oversight of BIA funded education. The Assistant Secretary sought to absolve the federal government of its trust responsibility in regard to education of Indian children, to "get out of the business" of education. Tribal governments were told that if they were not immediately prepared to take on the full governance of the BIA schools serving their children, those schools would slip out from their control altogether and be operated by states or third parties.

What the Navajo Nation is proposing in its comments and amendments to S. 1645 is legislation which supports and empowers tribal governments to take the lead role in directing the course of BIA funded education within their nations without coercing tribes into accepting one predetermined model for performing this role. We propose entrusting to tribal governing bodies and to tribal laws the primary decision regarding the extent to which the tribe will exercise oversight and governance over BIA funded education. Thus, we seek federal legislation which is permissive of and supportive of tribal education initiatives. At the same time, we propose language mandating the continued legal and trust responsibility of the Bureau of Indian Affairs in regard to Indian education. We seek to assure that no Indian tribe or local school board will be penalized for holding the Bureau to its responsibility to directly provide a high quality, culturally relevant education to Indian children who seek such services from the Bureau.

S. 1645 and H.R. 5, Title VIII also address certain areas of concern in Indian education other than the funding and operation of BIA and tribally controlled schools. We have also analyzed and developed specific recommendations regarding these sections.

As stated above, we recommend that the language of H.R. 5 regarding the reservation of funds under Title IV, Part B for development and improvement of tribal departments of education be incorporated into S. 1645. We make this recommendation in order to provide the resources to tribal governments to research, plan for and enhance their assumption of the role of tribal education agency.

We do NOT recommend incorporating language from H.R. 5 which would make determinations of eligibility for Title IV, part A funding depend on the decision of the parent committee and the LEA alone. We continue to be concerned with the dilution of scarce Indian education dollars through "eligibility criteria" with no standards. Many students in our public schools need "special services" and their needs should be appropriately addressed. However Title IV is to meet the needs of Indian students, and some safeguard is needed to assure that students who benefit from Title

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IV are truly identifiable as Indians culturally, genealogically and tribally. In addition, we recommend that Title IV, Part A funds be available to all publically funded schools serving Indian students, including BIA schools, and that funding levels be adjusted to reflect this additional pool of students.

We strongly support the language in S. 1645 creating a special program for gifted and talented Indian students funded through Title IV. This represents a long overdue recognition that gifted and talented Indian children are generally overlooked and ignored by existing gifted/talented programs. We look forward to the development of new programs and research in this area with the support of this legislation.

We do support the provisions of S. 1645 regarding authorized expenditures and funding authorizations for Navajo Community College. Restrictions on expenditure of funds for facilities repair has led to a continued deterioration of the two main NCC campuses. In addition, the existing funding arrangement has never met the goal of funding the true level of need at NCC. We would hope that these provisions are adopted by the Senate and incorporated into the final legislation in conference.

We support incorporation of the Native American Indian Schools Act from H.R. 5 into S. 1645. This legislation provides an avenue for innovation by Indian tribes in the establishment and operation of new and experimental schools to meet the needs of the tribe's students which are not adequately addressed by existing schools and programs.

We also support incorporation of the specific provisions in Part E of H.R. 5 for Native Hawaiian Education Programs. We are pleased to see distinctive programs being proposed for the Native Hawaiian population, coupled with specific funding authorizations and appropriations. Both American Indians and Native Hawaiians have significant and unique educational needs which are not currently being adequately addressed. It is unfortunate that in the past the federal government's approach to meeting these needs has been to set these two groups up to compete against each other for access to inadequate Indian education funds. The recognition of Native Hawaiians as a distinctive group with a need for their own supportive educational programs and resources is long overdue.

Finally, we are recommending the specific inclusion of language in S. 1645 supporting the proposed alternative school at the BIA training facility in Continental Divide, New Mexico. This project, which has the full support of all key elements within the Navajo tribal government, has languished on the desk of the Assistant Secretary of Interior for over 5 years. The project is desperately needed. A recent survey in Chinle Agency in the Navajo Nation, conducted under the direction of the BIA's Office of Indian Education Programs indicated an alarming drop-out rate for high school students in that Agency, and by implication, in the Navajo Nation generally. An estimated 55% of the Navajo youth

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between the ages of 14 and 18 are reported to be out of school and without a high school diploma.

The Continental Divide alternative high school clearly could not address the needs of the entire out-of-school population. It is, however, an important part of the total effort which needs to be made to reach these young people and offer them an opportunity to succeed.

We seek specific language requiring the BIA to renew its lease with the U.S. Forest Service for the Continental Divide site and specific language requiring the BIA to initiate start up procedures for the operation of the school, including seeking and identifying needed start up funds.

Again, we thank the Senate Select Committee for its continued support for quality Indian education, under the control and guidance of Indian tribes and Indian people. We hope that the recommendations made in connection with this testimony will be utilized to strengthen S. 1645 as a vehicle for meaningful education reform in the BIA funded system.

S. 1645 -- COMMENTS OF NAVAJO NATION

SECTION BY SECTION COMMENTS AND RECOMMENDED AMENDMENTS

This commentary is presented to complement the testimony submitted by the Navajo Nation to the Senate Select Committee on Indian Affairs in regard to S. 1645. In this commentary, we will identify our specific concerns with regard to various sections within that legislation and will make suggestions for amendments which would strengthen and clarify the legislation. We will also compare key provisions of S. 1645 and H.R. 5, Title VIII and indicate the preference of the Navajo Nation in the case of inconsistencies between the two bills.

TITLE I

Section 102. Statutory Authority for Bureau Funded Schools.

This section secures from unilateral BIA closure, consolidation or transfer all existing BIA funded schools and dormitories, all authorized schools and dormitories and any schools or dormitories which may be established within the BIA funded system subsequent to the adoption of the bill. This section is necessary to give the assurance of continuity to the BIA funded school system and to secure for Indian tribes and Indian controlled school boards sufficient control over and input into school closure, consolidation and transfer decisions.

One suggested change in this section is in regard to Sec. 102(3). This section seems to provide procedures for the Assistant Secretary to follow in closing, consolidating or transferring a BIA funded school -- an activity which the rest of the section prohibits him from undertaking. We feel that affected tribes and school boards should be consulted even in those cases where the Assistant Secretary is preparing to propose a school closure, consolidation or transfer to the Congress and should have defined consultation rights in the Assistant Secretary's carrying out a closure, consolidation or transfer which Congress has authorized. However the subsection, as written, creates the impression that there is a loophole to the prohibitions contained in subsections (1) and (2). We would suggest the following amendments to this subsection:

"(3) If the Secretary or any part of the Department of Interior, or of the Bureau, at any time, has under consideration or review proposing to the Congress or to any affected Tribe an action subject to paragraph (2), or is preparing to undertake an action subject to paragraph (2) at the direction of the Congress

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or at the request of an affected tribal governing body or bodies, the Secretary shall promptly report that fact to the affected tribal governing body or bodies and to local school board or boards of the school or schools involved. ..."

In addition, we recommend language at the end of this subsection stating:

"Nothing in this subsection shall be interpreted as in any way superceding or modifying the prohibitions contained in subsection (g)(2) of this section."

Section 103. Emergency And Special Situations.

This section deals with two kinds of special situation which have not been addressed to the satisfaction of Indian tribes and organizations in the past several years -- unilateral decisions by the BIA to close a school facility for "safety" reasons, and the failure of the BIA to provide an effective avenue for new school starts and programs expansions occurring at the initiative of a tribe or tribal organization.

a. Emergency school closures for "safety reasons".

We support the concept of having the BIA rely upon an outside building inspector to confirm the opinion of a BIA safety officer that a particular school facility is "unsafe" and must be closed. We support the creation of a preference for using a building inspector hired or designated by the affected tribe. At the same time, we feel that some parts of Section 103 (amending Section 1121(g), by creating a new section (5)) could create the situation where the BIA was required to ignore an obvious safety violation on the say-so of an unqualified inspector.

Therefore, we favor the language of H.R. 5, Sec. 8103, which provides that upon notice given to the involved tribe, the BIA may utilize an appropriate county, state or municipal building inspector to determine the presence of an immediate threat to health and safety even if the tribe has designated its own building inspector. This would not prohibit the tribe from conducting an inspection of its own. It would not allow the BIA to close a facility based solely upon its own "in house" assessment of the situation. It WOULD permit the BIA to obtain another OUTSIDE opinion upon which to base its actions if there is a serious question about the validity of the tribal building

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inspector's decision.

We also favor an addition of language to the end of the proposed subsection (5)(b) of Section 1121(g) as follows:

"Provided that nothing under this subsection shall absolve the Secretary or the Department from liability under the Federal Tort Claims Act which might otherwise apply for any loss or injury resulting from the maintenance of unsafe conditions in a BIA or other applicable federal facility".

We also particularly appreciate the addition of a subsection (C) to the proposed subsection 1121(g)(5) in S. 1645 which provides specific timelines within which the Secretary must make provision to reopen a school temporarily closed because of an "unsafe" condition. We would urge that this language be retained in the Senate bill and in conference.

b. Provisions for new school starts and program expansions.

A new subsection (6) is also proposed for Section 1121(g). This new subsection would require the Secretary to prescribe by regulation for new school starts and program expansions. While we do not object to this section as such, we are concerned that within Title II of S. 1645 there are far more liberal provisions which spell out the procedures through which tribally controlled schools may be expanded or new tribally controlled schools may be established. This unintentionally creates a bias in favor of tribally controlled schools rather than BIA schools in any new school start or program expansion.

We believe that a tribe should be able to determine for itself whether its new program needs can most effectively be addressed through a new BIA school or a new tribally controlled school or through the expansion of programs in an existing BIA school or tribally controlled school. For this reason, we have proposed new language to replace the proposed amendments to Section 1121(g)(6) in Section 103 of S. 1645, and the proposed procedures and criteria in Section 206(b) for applications for new tribally controlled schools or expansions of tribally controlled schools to be incorporated into one section equally applicable to new starts and expansions of BIA schools, contract schools and tribally controlled schools. This language is contained in Appendix A to this section-by-section commentary. We recommend its incorporation into S. 1645.

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Section 104. Dormitory Criteria.

We recommend that subsection (d)(3) of Section 1122 of the Education Amendments of 1978, as proposed in this Section, be further amended to read as follows:

"(3) By February 1, 1988, the Assistant Secretary shall submit to the Congress a report detailing the costs associated with, and actions necessary for, complete compliance with the criteria established under this section, and the costs associated with and actions necessary for appropriate alternatives to these criteria."

The language suggested would allow and encourage local schools to develop dormitory criteria better adapted to the needs of their students and the design of their dormitory facilities, and to have these alternatives included in the Secretary's report. We feel that the addition is necessary in light of the complaints of many school officials and school board members that certain of the dormitory criteria do not produce an appropriate residential environment in the particular facilities and for the particular students involved at their school.

Section 105. Enactment of Regulations.

This Section preserves from amendment parts 31, 32, 33, 39, 40, 42, and 43 of Title 25, Code of Federal Regulations. As stated in the testimony, we are generally supportive of this section. We concur in the decision of the Senate not to include part 36, Academic Standards and Dormitory Criteria, in this prohibition, since we believe that amendment may be advisable of this part to make it conform better to the wishes of tribes and local school boards. A great deal of tribal and school input was ignored in the development of the final version of Part 36.

At the same time, we would urge that Part 40 be deleted from the prohibitions included in this section. Part 40 deals with the regulations for post-secondary financial assistance. The BIA recently published notice of intended rulemaking in regard to this Part. The Navajo Nation has prepared and submitted a comprehensive commentary on the proposed regulations. While we have identified several deficiencies in the proposal, we have also found merit in them as well. We believe the proposed regulations should be revised in some particulars. It is possible that an additional comment period on the revised draft should be permitted.

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We feel, however, that Part 40 is in serious need of an overhaul, particularly if the scarce resources available for postsecondary financial assistance to Indian students through the BIA is to be targeted toward the students most in need of such assistance and most deserving of special consideration from the Bureau of Indian Affairs. We feel it would be unfortunate if a process of revising Part 40 in consultation with Indian tribes and other interested parties was totally prohibited by this law.

Another recommendation in regard to this section is to provide that it lapse two years after enactment. This will prevent the evil the section is designed to prevent, hasty adoption of ill conceived regulations undermining federal Indian education policy in the waning days of the current administration. It will assure, however, that after an appropriate period of restraint the Bureau is permitted to make a new start in working with Indian tribes and organizations to improve and refine the regulations governing Indian education. Particularly in light of the provisions of Section 110 regarding consultation, we would recommend placing a two year limitation on the prohibitions contained in this section.

We support the inclusion of the language proposed for Section 1123(c) which specifically provides for waiver of regulations when the waiver is for the benefit of an Indian. This language is not included in H.R. 5. It should be included in the final legislation.

We oppose the inclusion of proposed Section 1123(d). The changes recommended would prohibit utilization of BIA postsecondary financial assistance funds for student loans and would remove the requirement of "one-fourth or more degree of Indian blood". We believe that the decision of whether or not to utilize these funds to institute a student loan program should rest with the Indian tribe administering the program.

Likewise we believe the blood quantum requirement is necessary if these funds are not to be hopelessly diluted by applicants whose connection with their tribe and their heritage is tenuous at best. There is little enough of this money as it is. It should be targeted especially toward reservation populations with a strong tie to and identity with their people. The blood quantum requirement is one vehicle for focussing this program on the more traditional, reservation based population.

Section 106. Formula Modifications.

This section is essentially identical to the provisions of Sec. 8106 of H.R. 5. We support this section. We are

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particularly pleased to see specific provision made for provision of residential services on less than a nine-month basis. This will provide funds for temporary boarding of students who wish to reside at home while attending school but who must board during bad weather when their homes are inaccessible to the school bus.

Section 107. Administrative Costs

This section and its counterpart in H.R. 5, Section 8107, have undergone extensive scrutiny in our preparation of these comments. H.R. 5, in Section 8107, provides a statutory formula for determining administrative costs in support of tribally controlled schools (whether operated under grants or contracts). S. 1645 directs the Secretary to develop an administrative cost formula through regulations.

We support the concept of a statutory formula. The Secretary and the Bureau have consistently failed to develop an appropriate formula for administrative costs or indirect costs or contract support during the more than 10 years since the Self-Determination Act was enacted and the 9 years since the adoption of P.L. 95-561. The recent proposal of the Assistant Secretary to provide a flat rate of 15% to all contracts regardless of size or need indicates a continued unwillingness on the part of the Bureau to deal fairly or realistically with the issue of administrative cost.

The formula proposed in H.R. 5 is so constructed as to provide the greatest administrative cost rate to the smallest tribally controlled schools, which clearly need a higher rate if they are to generate enough administrative costs to operate effectively. As a school's direct cost budget increases, the formula decreases its percentage rate for administrative costs. This appears to be a very workable approach to this complex issue.

Nonetheless there are problems with the administrative cost formula contained in H.R. 5. By using the average direct cost budget rather than the median, it gives disproportionate effect to the budgets of schools at the extreme of the formula, an error which greatly increases the dollars needed to fund the formula. In addition, the proposed formula is linked for appropriations purposes to the Indian Student Equalization Program appropriation. As a result, failure of Congress to appropriate sufficient funds for the administrative cost formula could reduce the number of ISEP dollars per Weighted Student Unit received by both BIA operated and tribally controlled schools alike. This could disadvantage BIA operated schools to benefit tribally controlled schools.

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Staff from Navajo and other tribally controlled schools have met with representatives of the BIA and with Congressional staff to refine the original formula to simplify it and to address the two concerns we have raised above. The result is a new formula proposal which very clearly identifies the criteria to be used to determine administrative costs and utilizes the median direct cost rather than the average direct cost as a benchmark. In addition, the version of this new formula which the Navajo Nation favors, separates the administrative cost appropriation from the ISEP authorization.

We believe that the proposed administrative cost formula developed as a result of these new deliberations retains the benefits of a clear statutory formula while eliminating the most serious deficiencies. With this formula it will be possible to calculate exactly the appropriation which the Secretary of Interior SHOULD be seeking for administrative costs. This will make it possible for tribes to advocate for and Congress to provide full funding for the administrative cost formula.

The administrative cost proposal has two other valuable features in this regard. One is a phase-in of the new provisions over a three year period. This will assure that those schools which have in the past received more in indirect cost funding than they will realize under the formula will have time in which to gradually absorb the loss. The other feature is the required study of administrative costs. This study will allow an empirical assessment of whether the administrative cost formula in fact generates the dollars it should for the administrative functions of tribally controlled schools.

We have attached the new proposal for a statutory administrative cost formula to this commentary as Appendix B. We urge its incorporation into S. 1645 in place of the current Section 107.

Section 108. Local Procurement.

This section will strengthen the language currently in Section 1129 of P.L. 95-561, as amended, allowing a certain amount of local procurement by BIA school personnel without the necessity of competitive bidding. The Navajo Nation supports this section. We do note that the Bureau is already implementing a policy consistent with this section through a new BIA release. We believe, however, particularly given the history of problems with obtaining local discretion in procurement procedures, we believe that there is a need for statutory protection for local procurement discretion.

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Section 109. Coordinated Programs.

This section allows tribal governments the flexibility to develop coordinated service delivery systems between BIA and public schools. The Navajo Nation supports this section since it would facilitate various proposals to improve services and make economies in the Navajo Nation by sharing transportation services and other appropriate support services between B1. and public schools. We would suggest that the references to "BIA schools" be changed to "BIA funded schools" to clarify that tribally controlled schools may also be included by a tribe in a cooperative agreement entered into with a local education agency. We would also add the phrase "[or/and] the local governing body" to the phrase "the Secretary [or/and] the Supervisor" where this phrase appears in proposed subsections (f)(2) and f(3) of Section 1129 of the Education Amendments of 1978.

Section 110. Consultation.

This Section deals with a matter which is critical to the success of BIA education and to the establishment of Indian control of Indian education. The BIA should consult with Indian tribes on all matters affecting the operation or future development of BIA schools. This is so not only because the law already requires it but because true, effective consultation will lead to better administration of BIA education. It is a waste of a valuable resource not to consult with Indian educators and governmental leaders who are familiar with local educational needs and conditions.

Yet the Bureau and the Assistant Secretary have consistently failed to engage in any meaningful consultation with Indian tribes and Indian organizations. Section 110 attempts to remedy this situation by establishing a detailed, formal consultation requirement. We believe that the concept of regular meetings between the Bureau and Indian tribes and organizations is very positive. We suspect, however, that even the most dedicated tribal advocate will have a hard time keeping up with meetings every three months in different regions of the country.

We are also concerned that these formal meetings must not relieve the Bureau of the obligation to consult with individual Indian tribes and organizations regarding BIA plans for their individual schools and education programs.

Based upon these concerns, we have proposed a new Section 110, addressing both the formal consultation process through regional meetings and consultation with individual Indian tribes, school boards and communities. This proposed new Section 110 is attached to this commentary as Appendix C. We urge its adoption

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as substitute language for Section 110.

Section 111. Indian Employment Preference.

We have suggested a clarifying amendment to this section to replace the existing section:

" At 25 USC Sec. 2011(f)(1), after 'respecting an ..' , change 'employee' to 'applicant'."

"At 25 USC Sec. 2011(f)(2)(B), after '... any local' add 'agency, or area ...'."

Section 112. Personnel Compensation, Recruitment and Retention

We are very supportive of this section. One great impediment to improving the quality of education in the BIA funded system has been the increasing disparity between salaries in that system and in the public school system. There is a real need to improve salaries in BIA schools. This, together with a firm commitment to continue the operation of the BIA funded system will assist in attracting the kinds of qualified teachers and administrators who seek to achieve major career goals through a long term commitment to the teaching profession.

Although we support the provisions allowing a salary differential to be approved in the case of a BIA school which has an impaired ability to recruit qualified teachers because of low salaries, we would point out that this section does not generate any additional dollars to the school to pay for the differential. It is our experience that our BIA schools and contract schools are in fact often forced to find ways to further reduce the compensation paid to their teachers and administrators, such as seasonal furloughs and other measures, because of inadequate funds. We would hope that some means could be found both for BIA schools and tribally controlled schools to obtain the resources necessary to achieve salary parity with public schools when a sound distribution of the schools' ISEP funds results in salaries 5% or more below state averages.

We would also point out that, while salaries for teaching staff are often far below salaries of comparable personnel in the state public school system adjacent to the reservation, salaries of wage grade employees, under current pay scales are often unreasonably in excess of the prevailing rate in the surrounding communities, particularly in the case of

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employees who have been with the bureau for a number of years and enjoyed a number of automatic pay increases. These salaries for employees with seniority may result in bus drivers who earn more than teachers, cooks who earn more than the principal. This situation is also in need of correction.

In addition to the language already included in this section, we have developed some proposed amendments to 25 USC Sec. 2011 which we believe would complement and strengthen this section by adding the following new subsections to section 112:

"(b) Amend 25 USC Sec. 2011(a)(1) by including the phrase 'and sub-chapter IV' after the phrase 'after sub-chapter III'."

"(c) Amend 25 USC Sec. 2011(h)(1) by numbering the existing sub-section '(i)' and by adding the following new paragraph:

'(ii) The Secretary shall also conduct a wage survey of comparable positions among the state school districts located on or adjacent to the Indian reservations which have BIA operated schools and shall develop an initial pay scale for those positions formerly known as wage grade which provides for pay which is comparable to the average pay for comparable work in the identified state school districts. Such a survey will then be repeated at five year intervals for the purpose of determining pay scale adjustments.'"

"(d) Amend 25 USC Sec. 2011(n)(1)(A) by adding, after paragraph (iii) the following new paragraph:

'iv. any activity performed under the supervision of education officials and funded through education.'"

"(e) Amend 25 USC Sec. 2011(e)(1)(C) by substituting therefore the following paragraph:

'Educators employed in Bureau schools shall be notified by at least April 15 of each year whether or not their contract will be renewed.'"

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Section 113. Definitions

No comments.

Section 114. Indian Preference.

We support inclusion of this section in the legislation. We have long advocated the return of Indian control to the Office of Indian Education.

TITLE II

This title creates a new system for funding tribally controlled schools. A system of intergovernmental grants is established which would assume the continuity of tribally controlled schools unless an intervening event indicated that the schools were not satisfactorily meeting their educational objectives. This differs substantially from the current situation of schools contracted under P.L. 93-638, which must reapply for their contract and obtain a new permission to continue operations every three years.

The Navajo Nation supports the essential framework and concepts of this title. We have, however, suggested some language changes to clarify certain sections, make stronger provision for academic and fiscal accountability, define the authority of tribal governments over "tribally controlled schools", and provide for grants to tribes to undertake state education agency type functions in regard to the BIA funded schools serving the tribe. With these amendments, we can strongly support this Title. We do, however, consider certain of the amendments absolutely essential to the integrity and workability of the Title, particularly those strengthening accountability and defining the authority of tribal governments.

Sections 202 and 203. Congressional Findings and Declaration of Policy.

We support these two sections. They provide an important statement of the assumptions underlying this Title.

Section 204. Grants Authorized.

a. Use of the term "grant".

This section creates the basic "grant" system for tribally controlled schools. Some concern has arisen about the use of the word "grant". Under P.L. 93-638 and within the other departments of the federal government, such as the Department of Education, "grants" signify short-term, discretionary awards of money to accomplish a purpose of limited duration such as development of a plan, establishment of a pilot project, etc. Thus, the term "grant" is associated with impermanence, competition among applicants for limited funds and discretion in the funding agency as to whom to fund and how much money to

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provide. There is a concern that the mere use of the word "grant" will insidiously insinuate the current limitations of federal grants into the process of funding tribally controlled schools.

We understand and share the concern regarding the term "grant". A similar concern exists with regard to the use of the word "contract" under P.L. 93-638. Self-determination contracts have been unreasonably limited and hamstrung by the BIA's insistence on treating them like other federal contracts for goods and services. The procurement contract model has been unreasonably applied to what is fundamentally an agreement between two governments regarding the funding and carrying out of essential governmental services to Indian tribes. Under these circumstances it is legitimate to fear that the term "grant" used in regard to the funding of tribally controlled schools may be similarly misconstrued.

We recommend one of two solutions for this situation. Either a substitute for the term "grant", which carries no adverse connotations must be employed, or the term "grant" must be defined in this Title in a way which unmistakably distinguishes it from other federal grants. If an alternative term is to be applied, we recommend the word "agreement" as a substitute for grant. Even if this term is used, we believe a definition is required in this title.

If the term "grant" is to be retained, we recommend a definition similar to the new definition of "self-determination contract" contained in the proposed Senate amendments to the Self Determination Act. Such a definition could read as follows:

"Grant" as used in this Title means an intergovernmental agreement entered into pursuant to this Act between an Indian tribe or tribal organization and the Secretary of Interior for the purpose of assuring that the tribe or tribal organization has the authority and resources to plan, conduct and administer the operation of a school or of educational programs and services which are otherwise provided to Indian tribes and their members pursuant to federal law. No grant under this title shall be construed as discretionary or competitive or subject to the limitations on duration or authority which apply to grants under other federal titles."

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b. Other considerations in the section.

Subsection (c) of this section is unclear in H.R. 5 and too limiting in S. 1645. We have discovered that the original proposal for this subsection was inaccurately reflected in the floor amendment to H.R. 5. We believe that there should be an absolute dollar limit on the moving around of funds generated by individual school sites, but that a percentage limit of 5% for moving around funds could be too limiting in case of combinations of very small schools. For this reason we recommend replacing Section 204(c) with the following language:

"(c) In the case of a tribe or tribal organization which operates more than one school site under a grant, the operator may expend up to 10% of the funds granted, or \$400,000, whichever is the lesser amount, at school sites other than those at or for which the funds were generated. All funds must be spent at a school site covered by the grant on education related activities covered by the grant."

We would also recommend that the definition of school site included in subsection (d) of Section 8204 of H.R. 5 be incorporated into S. 1645 as subsection (d) of Section 204.

c. Grants for tribes to undertake performance of BIA education programs and functions comparable to those performed by state education agencies.

Title II speaks exclusively to grants for direct operations of schools. In the case of tribal governments, however, there is another education role which the tribal governments may wish to undertake in relation to the BIA funded schools which educate their children. This is the role of "state education agency", "SEA". The BIA currently plays many roles and performs many functions at the Agency level and above in regard to the operation of BIA funded schools, which involve the setting of Agency-wide policy, monitoring of program performance, provision of technical assistance, administration of flow-through funds, management of education information and data, oversight of standardized test administration, etc. These functions taken together fill much of the role that a state department of education plays in relationship to local school districts of the state.

In order to maximize the policy of Indian control of education which is so eloquently restated in the Congressional

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findings and statements of policy in this Title, the governing bodies of Indian tribes must be able to assume these roles and exercise this authority in regard to all the BIA funded schools serving exclusively or primarily (90% or more) children of that particular tribe. Tribal governments should not be relegated to competing with local governing boards for the hands-on governance of individual schools or creating a new layer of administration between the BIA and the BIA funded schools. Tribal governments should not be required to undertake a wholesale single contract or grant of school operations in order to play the essential administrative and policy making role in regard to these schools.

For this reason, we recommend the addition of a new subsection in this section specifically providing for grants to tribal governments to assume responsibilities and perform functions comparable to state education agencies in regard to the BIA schools which primarily or exclusively serve their children:

"(e) In addition to providing for direct program operation by tribal governments or by tribal organizations authorized by the tribal governing body, grants under this title may, at the request of the tribal governing body, be utilized to provide for tribal exercise of all program management functions (utilizing all program management positions), at the Agency and Area office levels and within related offices of the Bureau at any level, which are appropriate to the management and oversight of the BIA funded schools exclusively or primarily serving children from the particular tribe. Grants shall be made under this subsection so as to enable the tribal government to exercise functions and oversight comparable to a state education agency over those BIA funded schools which exclusively serve the tribe, or which generate 90% or more of their enrollment from members of the tribe."

Section 205. Grants eligibility.

This section defines those schools which are eligible to receive grants as tribally controlled schools under this Title. If the recommendation made in regard to Section 204 above regarding grants to tribal governments to perform SEA functions is adopted, there is a need for some additional language in this section to distinguish between grants for school operations and grants for SEA-type management and oversight.

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For this reason, we recommend that subsection (a) of this section begin as follows:

"(a) To be eligible for school operations grants under this title, a tribally controlled school shall fulfill one of the following criteria -"

In subsection (b) of this section, the reference to Section 206 of the Act should be amended to reflect the reference to the proposed section to deal with new school starts and program expansions of both BIA operated schools and tribally controlled schools.

In addition, current subsection "(c)" of the section should be renumbered subsection "(e)" and should be preceded by the following subsections:

"(c) Any application for expansion of an existing tribally controlled school or for establishment of an existing BIA school as a tribally controlled school and expanding its program which has been submitted by a tribe or tribal organization prior to the date of enactment of this Act shall be reviewed under the regulations and guidelines in effect on the date of submission or the provisions of [the section on new starts and program expansions as contained in Appendix A of this commentary], at the discretion of the applicant.

"(d) The tribal governing body of an Indian tribe shall be eligible to apply for a grant under Section 204(e) of this Act. In addition, the Secretary shall provide by regulation for applications from consortia of tribal governments to oversee and manage the operation of schools within one area serving different tribes or schools serving more than one tribe."

Section 206. Determination of Eligibility.

This Section is in need of amendment to reflect the authority proposed to be added under Section 204(e) for tribal grants for state education agency management and oversight functions in regard to BIA funded schools. It is also in need of amendment in regard to the new section proposed on new school starts and program expansions. In addition, other incidental

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clarifications of this section are proposed.

Subsection (a) of this section should be amended to reflect the addition of grants to tribal governments to perform state education agency functions:

"(a)(1) Within 120 days after receiving a request submitted by an Indian tribe or tribal organization for eligibility under subsection (b) of section 205, or, in the case of an Indian tribe, an application under subsection (d) of section 205, the Secretary shall make an initial determination of whether the applicant can maintain a tribally controlled school, or, in the case on an application by a tribe under subsection 205(d), whether the applicant can maintain a program of management and oversight over the identified BIA funded schools and programs through a tribal education agency . . ."

Paragraph (2) of subsection (a) of this section should be amended to assure that a tribally controlled school will have its grant become effective by July 1 of the year in which it becomes effective. This is needed to assure time to prepare for the commencement of the school year:

"(2) . . . A grant shall become effective beginning with July 1 of the fiscal year succeeding the fiscal year in which such application is made, or at an earlier date, at the Secretary's discretion."

Subsections (b) and (c) of this section should be consolidated into the new starts and program expansions section proposed in Appendix A to this commentary. A short subsection on each should be developed to relate new starts and expansions of tribally controlled schools to the general provision on new starts and program expansions:

"(b) Subsection (g)(6) of Section 103 [subsection of new section on new school starts and program expansions] shall apply to requests by a tribe or tribal organization seeking a grant for a tribally controlled school program for which funds from the Bureau of Indian Affairs have not been previously received. In addition to the factors prescribed by paragraph (B) of subsection (g)(6) of section 103 to be considered in

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making a determination regarding an application for a new school start, the Secretary shall determine the appropriateness of maintaining the proposed new school as a tribally controlled school in accordance with the criteria prescribed in subsection (a)(1) of this section. Provided however, that the timelines prescribed in subsection (g)(6) or Section 103 for considering applications for new school starts shall apply to the entire application process.

"(c) Subsection (g)(6)(D) of Section 103 [subsection of new section on new school starts and program expansions] shall apply to expansions of the grade levels offered or modification to the initial residential services by eligible tribally controlled schools, or proposals for expansion made in connection with an application by a tribal organization to operate a BIA school as a tribally controlled school under a grant, pursuant to this title. Provided, that the timelines prescribed in subsection (g)(6)(D) of Section 103 for consideration of requests for program expansions shall apply to the entire application process.

Amendment is needed to subsection (d) of Section 206 to conform it to the provisions of similar sections proposed for Section 103 and Section 210:

"All applications under this section shall be filed with the Office of the Agency Education Superintendent or Education Programs Officer or Area Education Officer, at the discretion of the Director of the Office of Indian Education Programs (hereinafter referred to as the "Office"), except that in the case of applications involving schools or programs serving more than one Agency, the Director shall designate an official above the Agency level to receive the application, and the calculation of timelines will begin on the date of receipt by the Office."

Section 207. Grants.

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This section has generated the greatest degree of concern in our review of this Title. A considerable need was felt to strengthen both the provisions regarding satisfactory performance and the description of the authority of the tribal governing body in regard to a tribally controlled school. In addition, there is a need to deal specifically with grants to Indian tribes to perform SEA-type functions in regard to BIA funded schools serving the tribe.

Subsection (b) of this section should be amended by adding the designation "(1)" to the existing paragraph of the subsection and adding two paragraphs as follows:

"(2) Grant renewal and continuation is subject to the authority of the tribal governing body, under such procedures as it may develop, to rescind, modify or place conditions upon its authorization. Provided, that no grant shall be rescinded, modified or conditioned except for good cause and upon notice and an opportunity for an impartial hearing to the tribal organization affected, as provided for and determined by the laws of the Tribe. The courts of the tribe have jurisdiction over questions arising regarding tribal actions under this paragraph.

"(3) In the absence of tribal action to the contrary, the authorization of the tribal governing body shall be considered as continuing in force. When a tribal governing body rescinds its authorization for a tribally controlled school, the matter shall be treated as a request for retrocession of a contract under P.L. 93-538, and the regulations pertaining to that procedure 25 CFR Sec. 271.72, or its successor) shall apply. "

Paragraph (1) of subsection (c) of this section should be amended to read:

"(c)(1) For purposes of this title, satisfactory performance by a tribally controlled school shall be defined only as :

(i) submission to the bureau and the appropriate tribal authority of the reports stipulated under paragraph (2) ;

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(ii) Satisfactory resolution of audit findings, and completion of any corrective action required by the cognizant audit agency in accordance with agreed-upon timelines; and

(iii) one of the following:

(A) Accreditation by a State or by a regional accrediting association recognized by the Secretary of Education, or candidacy in good standing for such accreditation under the rules of the State or regional accrediting association, showing that credits achieved by students within the education programs are or will be accepted at grade level by a State certified or regionally accredited institution, provided that the Assistant Secretary for Indian Affairs may waive this requirement for a period not to exceed three years if the Assistant Secretary determines that there is a reasonable expectation that candidacy or accreditation will be reached within that time and that the program offered is beneficial to the Indian students.

(B) Accreditation by a Tribal Education Agency under procedures and standards adopted by the tribal governing body. Provided, that the Assistant Secretary shall report to the Congress on the accreditation standards and procedures established by any tribe and made applicable to one or more tribally controlled schools as their sole accreditation criteria in any year in which such standards and procedures are adopted or significantly amended.

(C) Acceptance of the standards promulgated under section 1121 of the Education Amendments of 1978, evaluation and performance under this section to be done in conformance with the regulations pertaining to Bureau operated schools by an outside evaluator chosen by the grantee and approved by the appropriate tribal authority, but no grantee shall be required to comply with these standards to a higher degree than a comparable Bureau operated school.

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(D) A positive evaluation conducted once every three years with the approval of the appropriate tribal authority for performance under standards adopted by the contractor under the contract for a school contracted under P.L. 93-638 prior to the date of enactment of this title, such evaluation to be conducted by an outside evaluator agreed to by the Secretary and the grantee, provided that upon failure to agree upon such an evaluator or at the request of the tribal authority, the tribal authority shall choose the evaluator or perform the evaluation. The Secretary shall report to the Congress all existing standards in place in tribally controlled schools authorized to remain in force by this subparagraph.

"The choice of standards shall be consistent with section 1121(e) of the Education Amendments of 1978 ; provided that the tribal governing body has the authority to require all tribally controlled schools authorized by the tribe to be subject to tribal law, including tribal education laws and standards."

In paragraph (2) of subsection (c), which describes the reports which must be submitted, we recommend that the subparagraph (B) require an annual audit, since the Single Audit Act requires an annual audit.

In addition to the above language, we recommend that subsection "(d)" of Section 207 be renumbered "(e)" and that the following subsection be added to the section:

"(d) In the case of a grant to an Indian tribe pursuant to subsection (d) of section 205, satisfactory performance shall be defined only as:

"(1) An evaluation every three years by an outside evaluator agreed to by the BIA and the tribe of the program performance of the tribe under the grant, consistent with the agreed upon scope of work, together with satisfactory resolution of the evaluation findings and completion of any corrective action required to comply with the grant requirements, in accordance with agreed-upon timelines;

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"(2) Satisfactory resolution of audit findings, and completion of any corrective action required by the cognizant audit agency in accordance with agreed-upon timelines; and

"(3) Submission of the following reports:

"(i) an annual financial statement reporting revenue and expenditures as defined by the cost accounting established by the tribe;

"(ii) an annual financial audit conducted pursuant to the standards of the Single Audit Act of 1984;

"(iii) an annual submission to the Secretary of a report, briefly describing the programs and services provided under the grant; and

"(iv) a program evaluation by an outside entity conducted pursuant to paragraph (i) above."

The subsection renumbered (e) provides for retrocession of a grant at the request of an Indian tribe. We recommend that a sentence be added to the end of this subsection to read as follows:

"A request by a tribe for retrocession of a grant to a tribal organization previously authorized by the tribe to operate a tribally controlled school shall be preceded by the tribal administrative procedures prescribed in subsection (b)(2) of Section 207 of this Title, but shall not require completion of tribal judicial procedures."

This subsection should also have language from the comparable section of H.R. 5 added at the end of the subsection as follows:

"The Bureau shall provide to the tribe or tribes served by a grant which is retroceded not less than the same quantity and quality of service as would have been provided at the level intended by the grant."

Existing subsection "(e)" of this section should be renumbered "(f)", and should be amended to read as follows:

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"(f) The Secretary shall not make a determination of a lack of satisfactory performance or reassume a program until the Secretary provides notice to the tribal authority authorizing the tribally controlled school or providing education management and oversight functions pursuant to a grant under this title, giving the specific deficiencies which led to the negative determination and the actions which are needed to remedy said deficiencies and allow ing such authority a reasonable and adequate opportunity to effect any remedial actions, ..."

Section 208. Grant Amounts.

We are recommending some clarifying language for this section to specifically reference the authority of the tribal government to apply tribal education laws to the operation of supplemental programs in tribally controlled schools and to specify that the regulations of the U.S. Department of Education regarding the supplemental programs it provides to the Bureau for administration in BIA funded schools do apply to these programs as they are administered in tribally controlled schools. Therefore, we recommend that subsection (a)(3) of this section be amended by adding the following language at the end of the paragraph:

"Provided that regulations of the Department of Education governing Chapter I of the Education Consolidation and Improvement Act and the Education of the Handicapped Act shall be applicable to the operation of these programs in BIA funded schools. Provided further that Indian tribes may subject tribally controlled schools to tribal laws regarding these programs, consistent with the requirements of the programs themselves."

We further recommend, as a technical correction, that a comma be removed from the first sentence of subsection (b) and that the subsection read as follows:

"(b) No grantee receiving a grant shall be held accountable for interest earned on grant funds pending their disbursement for program purposes. ..."

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We recommend that subsection (d) from Section 8208 of H.R. 5 be incorporated into Section 208 of S. 1645 with modifications to read as follows:

"(d) The Secretary shall make payments to grantees under this Act in three payments, one to be made no later than October 1 of each fiscal year, said payment to be one-half the amount paid to the grantee or contractor electing to be covered by this Act during the preceding fiscal year; the second payment, consisting of one half the remainder to which said grantee or contractor is entitled for the current fiscal year, to be made no later than January 1 of the fiscal year; and all funds remaining thereafter owed to the grantee or contractor to be paid no later than July 1 of the fiscal year. For any school for which no payment was made in the preceding fiscal year, the amount of the payment due October 1 of the fiscal year shall be determined based upon the estimated size of the grant so as to achieve a distribution approximately comparable to that applied to existing grantees and contractors, except that an additional share of the expected funds may be included in the October 1 payment when necessary or advisable to permit most effective administration of the first year's budget.

Section 209. Applicability of Other Statutes.

This section integrates provisions of Title II with P.L. 93-638, the Indian Self-Determination and Education Assistance Act. The specific sections include provision for audit requirements, penalties, wage and labor standards, personnel, reassumption and appeals. The House Bill, H.R. 5 includes all these provisions except the section of the Self-Determination Act dealing with reassumption (Sec. 105). We recommend that additional language be added to this section clarifying that reassumption may not be had for any cause which would not justify termination of the grant under the provisions of this Act. We also recommend additional language to remove the time limit on federal employees electing to transfer federal benefits when their employment is transferred from the jurisdiction of the federal government to the jurisdiction of a tribally controlled school. Finally, we recommend that the provisions on election to

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operate under a grant or a self-determination contract be changed to allow such election to be made at any time. The section, as amended, would read as follows:

"(a) All provisions of sections 5, 6, 7, 105, 109, and 110 of the Indian Self-Determination and Education Assistance Act (Public Law 93-638) except those provisions pertaining to indirect costs and length of contract shall apply equally to grants under this title. Except that:

"(1) Reassumption under Section 109 may not be had for any cause other than one which would justify termination of a grant pursuant to Section 207 (e) of this Act and may not be had unless the Secretary has complied with the requirements of subsection (e) of Section 207 of this Act regarding notice, opportunity for remedial action and provision of technical assistance; and

"(2) The entitlement of employees who leave federal employment to provide a comparable service under the direction of a tribal organization in a tribally controlled schools, as specified in subsection (e) of Section 105 of the Indian Self-Determination and Education Assistance Act, to retain coverage, rights and benefits they have enjoyed as federal employees shall not be subject to any limitations of date in regard to when such employees may leave federal employment for tribal employment without losing their employee benefits.

"(b) Contractors who have a contract under the Indian Self-Determination and Education Assistance Act in effect upon the date of enactment may elect to have the provisions of this Act apply to such activity upon notice to the Secretary and authorizing tribal governing body of such election, provided that the election shall become effective no less than 60 days after notice is given, or October 1 of the fiscal year following the fiscal year in which notice is given, whichever is later."

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Section 210. Role of the Director.

We recommend that this section be amended to read as follows:

"Applications for grants pursuant to this title and all application modifications shall be reviewed and approved by personnel under the direction and control of the Director of the Office of Indian Education Programs. Grants involving schools or programs serving more than one Agency shall be negotiated with personnel above the Agency level. Required reports shall be submitted to education personnel under the direction and control of the Director of such office."

Section 211. Definitions.

We have already proposed an additional definition for this section -- a definition of a "grant" under this Title which distinguishes such grants from the discretionary grants administered by various federal departments including the BIA and the U.S. Department of Education.

In addition, we recommend the addition of language to the definition of "tribally controlled school" to clarify the relationship of tribally controlled schools to the tribal government:

"(5)'tribally controlled school' means a school operated by a tribe or a tribal organization enrolling students in pre-school up through the receipt of a high school diploma or a generally recognized equivalent, which is not a local educational agency as defined in this title and is not directly administered by the Bureau of Indian Affairs. Such schools are subject to the laws of the tribe which they serve, including education laws and standards, and, consistent with the specific requirements of federal law shall conduct themselves in accordance with tribal requirements.

Other Titles of S. 1645.

The prepared testimony of the Navajo Nation on S. 1645 which this commentary supplements addresses our concerns in

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regard to the remaining titles of S. 1645 and in regard to the titles of H.R. 5 addressing matters other than those considered thus far in this commentary. We will not restate those positions here. We have considered Titles I and II of this act most in need of a section by section commentary to supplement the basic testimony. We would urge that the concerns raised in our primary testimony regarding Title IV, gifted and talented students, special provision for establishing tribal schools, programs and services for Native Hawaiians, and provisions for adequate funding for Navajo Community College be given serious consideration in further deliberations on this legislation by the Senate Select Committee and by the Congress.

APPENDIX A

Navajo Nation Commentary on S. 1645

PROVISION FOR NEW STARTS AND PROGRAM EXPANSIONS

We recommend that Section 103(g)(6) be amended by striking the language in the subsection and replacing it with the following new language:

"(6)(A) Whenever the Assistant Secretary on his initiative proposes to establish a new BIA funded school or expand the programs in an existing BIA funded school, he shall consult with the individual Indian tribe or tribes affected, the communities affected and the local school board, if any, as required by Section 110(b)(4) of this Act and shall obtain the concurrence of the appropriate tribal authority of the Indian tribe or tribes affected before commencing action on the proposed new school start or program expansion.

(B) The Secretary, within 180 days after receiving a request by an Indian tribe or tribal organization seeking the establishment of a new BIA funded school or BIA funding for a school for which funds from the Bureau of Indian Affairs have not been previously received, shall conduct an eligibility study to determine whether there is justification to maintain a new BIA funded school and shall make an initial determination regarding both the proposed new school start itself and the method of governance. In making this determination, the Secretary shall give equal weight to all of the following factors:

(i) Within the applicant's proposal:

-- the adequacy of facilities or the potential to obtain or provide adequate facilities;

-- geographic and demographic factors in the affected areas;

-- adequacy of applicant's program plans;

-- geographic proximity of comparable public education, provided that no negative decision can be made primarily based on proximity of

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such programs; and

-- the wishes of all affected parties, including, but not limited to students, families, tribal governments at both the central and local levels, and school organizations; and

(if) with respect to all education services already available --

-- geographic and demographic factors in the affected areas;

-- adequacy and comparability of programs already available;

-- consistency of available programs with tribal education codes or tribal legislation on education;

-- the history and success of these services for the proposed population to be served, as determined from all factors, and not just standardized examination performance.

(C)(i) An application from a tribal organization under this paragraph (B) of this subsection shall be accompanied by an action by the tribal governing body authorizing such application. The application shall specify the form of school governance sought by the tribe, whether operation as a tribally controlled school under a grant, pursuant to this Act, operation under a contract pursuant to P.L. 93-638 or direct operation of the school by the Bureau.

(ii) In evaluating an application for a new start, the Secretary shall consider equally applications to establish and operate new schools as tribally controlled schools under grants pursuant to this Act, as contract schools under P.L. 93-638, or as BIA operated schools. In evaluating an application to operate a new tribally controlled school through a grant under this Act, the criteria established in Section 206(a) shall apply. In evaluating an application to operate a new contract school under a self-determination contract, pursuant to P.L. 93-638, the criteria established in that law and its

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regulations for reviewing applications to contract shall apply. Timeines for acting on an application for a new start under any form of governance shall be those established in this subsection.

(iii) Submission of information on the factors in paragraph (8)(i) shall constitute an adequate submission for purposes of an application under this paragraph, provided that the applicant may also provide such information relative to the factors in paragraph (8)(ii) as it considers appropriate. Except as provided in subparagraph (v), an authorization for a new start, whether by grant, contract or direct Bureau operation, shall become effective beginning July 1 of the fiscal year succeeding the fiscal year in which such application is made or at an earlier date, at the discretion of the Secretary.

(iv) Whenever the Secretary declines to authorize a new school start under this subsection, the Secretary shall --

-- state the objections in writing to the tribe or tribal organization within the allotted time,

-- provide assistance to the tribe or tribal organization to overcome all stated objections,

--provide the tribe or tribal organization a hearing, under the same rules and regulations pertaining to the Indian Self-Determination and Education Assistance Act, and an opportunity to appeal the objection raised.

(v) If the Secretary fails to make a determination within 180 days of receipt of the application, such application is approved, provided that in these cases, the new school shall commence start-up operations 18 months after the date of application, or at an earlier date, at the Secretary's discretion.

(D)(i) Expansions of the grade levels offered or modification to initiate residential services which are sought in regard to any BIA funded school by an Indian tribe or by the tribal organization or local BIA school board

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operating the school shall require an application. Such application shall be by a tribe or be accompanied by an action of the tribal governing body authorizing such application. The Secretary, within 120 days after receipt of an application under this subsection shall make a final determination on such application. Expansion or change of services or programs within grade levels shall not require Secretarial approval, except, in the case of a BIA operated school, to the extent such approval is required by the operating procedures of the BIA regarding schools directly operated by the Bureau. In reviewing all applications under this paragraph, the Secretary shall give equal weight to applications made in regard to BIA operated schools, schools operated under a contract pursuant to P.L. 93-638 and tribally controlled schools operated through grants under this Act. The Secretary shall give equal weight to the factors listed in paragraph (8) of this subsection and to the enhancement of the quality of the overall program offered by the applicant. Whenever the Secretary declines to agree to the expansion proposed under this paragraph, the Secretary shall (1) state his objections in writing to the tribe, tribal organization or board in the allotted time, (2) provide assistance to the tribe, tribal organization or board to overcome all stated objections, and (3) provide the tribe, tribal organization or board a hearing under the same rules and regulations pertaining to the Indian Self-Determination and Education Assistance Act, and an opportunity to appeal the objection raised.

(ii) A modification to a grant or contract pursuant to this paragraph or the implementation of an expansion in a BIA school shall become effective beginning on July 1 of the fiscal year succeeding the fiscal year in which such application is made, except that an expansion involving more than two grade levels or their equivalent, or the addition of residential services to a program not now offering them shall become effective the later of 12 months after the application or July 1 of the fiscal year succeeding the fiscal year in which the application is made, unless the Secretary shall authorize an earlier date. Whenever the Secretary declines to modify a

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grant or a contract pursuant to this paragraph, the Secretary shall (1) state the objection in writing to the tribe or tribal organization within the allotted time, (2) provide assistance to the tribe or tribal organization to overcome all stated objections, and (3) provide the tribe or tribal organization a hearing under the same rules and regulations pertaining to the Indian Self-Determination and Education Assistance Act, and an opportunity to appeal the objection raised.

(E) Applications under this paragraph shall be filed with the Office of the Agency Education Superintendent or Education Programs Officer, or Area Education Officer at the discretion of the Director of the Office of Indian Education Programs (hereafter called the "Office", except that in the case of applications involving schools or programs serving more than one Agency, the Director shall designate an official above the Agency level to receive the application, and the calculation of the timelines will begin on the date of receipt by the Office.

(F) The Secretary shall include applications made under this subsection in his annual report to Congress made pursuant to Section 206(e) of this Act and shall incorporate such report into his appropriations request. The report shall show projected cost data for each application received since submission of the previous appropriations request, and actions taken on each, including the principal objections to each application that was declined.

(G) The Secretary shall make such regulations as are necessary for the implementation of this subsection. Provided, that such regulation shall not create any limitations on new school starts or expansions beyond those expressly provided for in this Act. Provided further that the failure of the Secretary to adopt regulations under this subsection shall not justify the Secretary to deny, refuse, delay or otherwise place limitations upon any application for a new school start or a school or program expansion.

ADMINISTRATIVE COST

SEC. 107. (a) The text of subsection (c) of section 1128 of the Education Amendments of 1978 (25 U.S.C. 2008) is amended to read as follows:

"(c)(3) The Secretary shall, subject to appropriations, provide to all tribal schools an amount for administrative and indirect costs to be computed under the formula set out in subparagraph (A) below except as otherwise provided herein. The purpose of paying such costs is to enable tribal organizations operating such schools, without reducing direct program services to the beneficiaries of the program operated, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice, and to carry out other necessary support functions which would otherwise be provided to or by the Assistant Secretary or other Federal officials, from resources other than direct program funds, in support of comparable Bureau-operated programs. In providing administrative and indirect costs under this provision the Secretary shall not reduce other program funds including those determined under subsection (a) of this section.

"(A) Subject to definition, in paragraph (4) of this subsection, of the terms underlined, the amount of administrative and indirect costs to be provided to each contract school shall be determined by an administrative cost percentage rate derived by use of the following formula:

The product of the school's direct cost base multiplied by the minimum base rate, added to the product of the standard direct cost base multiplied by the maximum base rate, in total;

divided by

the total of the school's direct cost base added to the standard direct cost base;

shall equal the school's un-adjusted administrative cost percentage rate.

"(B) Substituting provisional values set in the definitions, for the underlined terms, in mathematical notation the formula reads:

$$\frac{((.12 \times \text{direct cost base}) + \$300,000)}{(\text{direct cost base} + \$600,000)} (= \text{--- \% rate})$$

"(C) These provisional values shall be subject to administrative revision only upon approval of the Congress oversight committees with responsibility for this activity and in accordance with the study or studies authorized under paragraph (7) below.

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"(D) Each such school's administrative cost percentage rate as determined under subparagraph (A) of this paragraph shall then be adjusted to four decimal points as follows:

"(i) Where applicable, by the addition of an 'isolation adjustment' percentage as defined herein.

"(ii) Where applicable, by the addition of a 'multiple program adjustment' percentage as defined herein.

"(E) Subject to the phase-in provisions in paragraph (6) of this subsection, this adjusted administrative cost percentage rate shall be applied in fiscal year 1989 and each fiscal period thereafter to each of the direct cost programs operated by the tribe or tribal organization, funds for which are received from or through the Bureau of Indian Affairs, to generate an add-on allowance for the Administrative Costs of each such program for that fiscal period, as follows:

"(i) For all direct cost programs operated by the tribe or tribal organization which share common administrative cost functions, funds for which are received from or through the Bureau, the percentage rate shall be applied to the total direct costs of each such program in the same manner as an indirect cost rate, to generate an administrative cost allowance, payable by the Bureau as lead agency from funds appropriated to and administered by the Bureau.

"(ii) For other direct cost programs operated by the tribe or tribal organization which share common administrative cost functions with those in sub-paragraph (E)(i) of this paragraph, from whatever source derived, this administrative cost percentage rate shall be allowable as a pre-determined indirect cost rate. At the option of the tribe or tribal organization, however, a multiple indirect cost rate system may be established instead, for such other programs, using accepted procedures for so doing.

DEFINITIONS

"(4) As used in this subsection:

"(A) 'Administrative cost' means the costs of necessary administrative functions which a tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program, which are not customarily paid by comparable Bureau operated programs out of direct program funds, but which are either normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds, or are otherwise required of tribal self-determination program operators by law and/or prudent management practice. Such functions may include, but are not necessarily limited to contract (or other agreement) administration; executive, policy, and corporate leadership and decision making; program planning, development and management; fiscal, personnel, property, and procurement management; related office services and record keeping;

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provide all required Administrative Cost functions, as defined herein, at the 'smallest' Tribal elementary or secondary educational programs. Subject to revision based upon studies to be conducted by the Secretary and reported to the Congress as specified herein, this rate is provisionally established as '50%'.

"(F) 'Minimum base rate' means a fixed administrative cost percentage rate which, using the formula in Section 1128(c)(3), will assure adequate (but not excessive) funding to provide all required Administrative Cost functions, as defined herein, at the 'largest' Tribal elementary or secondary educational programs. Subject to revision based upon studies to be conducted by the Secretary and reported to the Congress as specified herein, this rate is provisionally established as '12%'.

"(G) 'Multiple program adjustment' means a percentage to be added to the base administrative cost rate established under the formula in Section 1128(c)(3)(A), at the rate of one quarter percentum for each separate school in excess of one, and/or each Bureau program or part of a program in excess of those defined herein as 'Bureau elementary and secondary functions', which is operated by a given tribe or tribal organization under a self-determination agreement with the Bureau, and which shares common Administrative Cost services with the Bureau elementary (secondary functions operated. The percentage rate in this adjustment is subject to revision based upon studies to be conducted by the Secretary and reported to the Congress as specified herein, and is only established provisionally.

"(H) 'Smallest', 'largest' and 'program size' of tribal elementary or secondary educational programs, are determined by the aggregate direct cost program funding level for all Bureau funded (or administered) programs operated which share common administrative cost functions as defined herein.

"(I) 'Standard direct cost base' means the aggregate direct cost funding level for which an administrative cost percentage rate equal to the median between the 'maximum base rate' and the 'minimum base rate', as defined herein, will assure adequate (but not excessive) funding, using the formula and procedures in Section 1128(c)(3), to provide all required administrative cost functions for the tribal elementary or secondary educational programs nearest that 'program size'. Subject to revision based upon studies to be conducted by the Secretary and reported to the Congress as specified herein, this funding level is provisionally established as \$600,000 per year.

"(J) 'Tribal elementary or secondary educational programs' means all Bureau elementary and secondary functions, together with any other Bureau programs or parts of programs (excluding social services "pass through" funds and major subcontracts, construction and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions as defined herein, operated directly by a tribe or tribal organization under a self-determination contract or other funding instrument from the Bureau.

MANAGEMENT PROVISIONS

"(5) Funds received as administrative cost allowances for tribal elementary or secondary educational programs may be combined into a single administrative cost pool by the recipient, and thereafter no separate accounting by funding source shall be required.

"(A) Indirect cost funds for other programs at the school which share common administrative services with tribal elementary or secondary educational programs may be incorporated as part of such an administrative cost pool, at school option.

"(B) Unspent and/or unobligated funds at the close of a fiscal period, received in support of tribal elementary or secondary education programs, shall be carried over to be used in the succeeding fiscal period, without diminishing funds due under this subsection for that fiscal period. For purposes of indirect cost carry forward procedures, any unspent and/or unobligated indirect cost funds included in an administrative cost pool at the close of a fiscal period shall be calculated as a pro-rata share of the remaining balance, based on the percentage of the pool made up by such indirect costs.

"(C) The Secretary shall take such steps as may be necessary to seek reimbursement to the Bureau of administrative cost allowances paid in support of programs administered by the Bureau on behalf of Indians, for which appropriations are made to other Agencies of Government, but shall not reduce payments of administrative cost allowances to tribes and tribal organizations as a result of the success or failure of such efforts.

"(D) Funds received or due as an administrative cost allowance under the provisions of this subsection, for Bureau funded or administered programs operated by a tribe or tribal organization under a self-determination contract or other form of conveyance, shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency, for any other funds, from whatever source derived.

PHASE IN PROVISIONS

"(6)(A) During fiscal year 1988, the Secretary shall compute an administrative cost allowance, which shall be subject to the management provisions in paragraph (5) of this subsection, for each new and/or continuing tribal elementary or secondary educational program on the same basis as indirect costs were computed for such programs in fiscal year 1987.

"(B) Beginning Oct. 1, 1988, the Secretary shall compute administrative cost allowances for all new tribal elementary or secondary educational programs using the formula and procedures established in this subsection.

"(C) Beginning Oct. 1, 1988, the Secretary shall phase in the

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implementation of the formula established in this subsection, for ongoing tribal elementary or secondary educational programs, by calculating an adjusted administrative cost allowance for each such program using the formula, and then further computing an administrative cost allotment for Fiscal Year 1989 for each affected tribe or tribal organization equal to the amount received in support of the ongoing tribal elementary or secondary educational programs in fiscal year 1987 (or fiscal year 1988 in the case of tribal elementary or secondary educational programs initiated in that fiscal period) adjusted by one third of the difference between that amount and the allowance calculated using the formula.

"(i) Beginning Oct. 1, 1989, the Secretary shall calculate an adjusted administrative cost allowance for each such ongoing program using the formula and procedures established in this subsection, as they may be amended prior to that date, and shall further compute an administrative cost allotment for fiscal year 1990 for each affected tribe or tribal organization, equal to the amount received in support of the ongoing tribal elementary or secondary educational programs in Fiscal Year 1989, adjusted by one half of the difference between that amount and the allowance calculated using the formula.

"(ii) Beginning Oct. 1, 1990, and each year thereafter, the Secretary shall compute an administrative cost allowance, and allot funds thereby (subject to the availability of appropriations), for all tribal elementary or secondary educational programs as defined herein, solely by means of the formula established in this subsection, as it may be amended from time to time.

"(D) During the period from Oct. 1, 1988 to Oct. 1, 1990, any Tribal Organization which operates a school or schools under a self-determination contract or agreement with the Bureau, for which the total funding for Bureau elementary and secondary education functions is less than half of the aggregate funding for these and all other Bureau funded direct cost programs so operated by the Tribal Organization, may elect once for all either to adopt the Administrative Cost Formula herein, or to retain its prior arrangements for funding indirect costs for Bureau programs.

STUDIES AND REPORTS

"(7)(A) Beginning on Oct. 1, 1987, or upon the enactment of this subsection into law, whichever is later, the Secretary shall conduct such studies as may be needed to establish an empirical basis for determining relevant values, percentages, milcages, or other factors substantially affecting the required administrative costs of tribal elementary and secondary educational programs, using the formula established by this subject. Such studies shall:

"(i) Be conducted in full consultation, as defined in Section 1130 of the Education Amendments of 1988 (25 U.S.C. 2008), as

amended herewith, with the tribes and tribal organizations to be affected by the resulting formula, and with all national and regional Indian organizations of which such tribes and tribal organizations are typically members; and

"(ii) Be conducted on-site at a representative statistical sample of the tribal elementary or secondary educational programs identified in sub-paragraphs (c)(5)(E), (F), and (I) of this subsection, by contract with a nationally reputable Public Accounting and Business Consulting firm; and

"(iii) Take into account the availability of skilled labor, commodities, business and automatic data processing services, related Indian preference and Indian control of education requirements, and any other market factors found substantially to affect the administrative costs and efficiency of each such tribal elementary or secondary educational program studied, so as to assure that all required administrative cost functions, as defined herein, could reasonably be delivered in a cost effective manner for each such program, given an administrative cost allowance generated by the values, percentages, or other factors found in the studies to be relevant in such a formula. Judgements should be based on what is pragmatically possible to do at each such location, given prudent management practice, irrespective of whether such required administrative cost functions were actually or fully delivered at these sites, or other functions were delivered instead, during the period of the study; and

"(iv) Identify, and price in terms of percentages of direct program costs, any general factors arising from geographical isolation, or numbers of programs administered, independently of program size factors used to compute a base Administrative Cost percentage in the formula set forth herein.

"(v) Identify any other incremental cost factor(s) substantially affecting the costs of required administrative cost functions at any of the tribal elementary or secondary educational programs studied, and determine whether they are of general applicability to other such programs, and (if so) how they may effectively be incorporated in such a formula.

"(B) Upon completion of such studies, but in no case later than Oct. 1, 1988, the Secretary shall report to the Congress the findings thereof, together with his recommendations for revision of the formula and related values, percentages, and other factors established by this subsection, based upon such findings.

"(C) The Secretary shall include in the Bureau's justification for each new appropriations request, beginning with that for fiscal year 1989, a projection of the overall costs associated with the formula established in this subsection, as it may be amended from time to time, for all ongoing and projected new tribal elementary or secondary educational programs which the Secretary expects to be funded in the fiscal year for which the appropriations are sought.

APPENDIX C

Commentary of Navajo Nation on S. 1645

Proposed Alternative Section on Consultation

Sec. 110 (a) Section 1130 of the Education Amendments of 1978 (25 USC 2010) is amended as follows:

(1) by deleting "Bureau" the first time it appears and inserting in lieu thereof "the Secretary and the Bureau";

(2) by inserting "(a)" after the section designation; and by inserting after subsection (a) as so designated the following subsection:

"(b)(1) All actions under this Act shall be done in active consultation with tribes.

"(2) For purposes of this Act, the term 'consultation' means:

(i) a process of meeting with tribes, Alaska native entities and Indian and tribal organizations on a periodic and systematic basis, and

(ii) an ongoing process of meeting with individual tribes, Alaska native entities and Indian and tribal organizations regarding any plans, policies or decisions being reviewed or developed by the Secretary or the Bureau which affect or potentially affect the particular tribe, Alaska native entity or Indian or tribal organization .

"(3) (i) Consultation conducted pursuant to subsection (b)(2)(i) of this section shall be undertaken through meetings conducted by the Secretary or his designees at least semi annually and shall be preceded by notice given at least 30 days prior to any such meeting. Notice shall be given in the Federal Register, along with a list of topics to be covered. Meetings shall be held in different regions of the country so as to facilitate participation. During such meetings, department officials shall provide information on all matters, including budget initiatives and discussions, all regulatory provisions which will be or are being considered for amendment or change within the next six months, all administrative changes affecting delivery mechanisms, and shall seek input on all issues considered important by the Indian entities participating, including those issues affecting programs in other Federal agencies.

(ii) Unless for clear and convincing reasons, Department officials shall give effect to the views of the Indian entities identified in paragraph (3)(i) above. No policy or regulation relating to matters for which consultation is required under this section may be initiated or changed or published in the Federal Register for comment as a proposed rule prior to such consultation.

(iii) While the Secretary is required to consult on a more individual basis with Indian tribes and entities as described in subsection (b)(4) of this section, no individual

APPENDIX C to Navajo Commentary on S. 1645

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consultation or discussion or procedure outside the meetings required by this subsection shall substitute for these meetings mandated by paragraph (3)(i) above in satisfying the requirements of this subsection.

"(4)(i) The Secretary and the Bureau shall keep Indian tribes, Alaska Native entities and affected Indian and tribal organizations informed of its plans and activities which affect or relate to BIA funded schools or education programs serving the particular Indian or tribal entities and shall invite active participation of affected Indian and tribal entities in the decision making process regarding changes to be made or needs to be met in these schools and programs. Planning by the Secretary or the Bureau above the local school board level for individual BIA funded schools and educational programs shall be undertaken in a cooperative and consultative manner based upon an open exchange of information and views.

(ii) When planning construction or expansion of any school and when planning proposals to Congress for the closure, consolidation, curtailment or transfer of any school or school residential unit, the Secretary shall, from the initial stages, consult with the affected tribe or tribes and with the affected school board and school board organizations, Indian or tribal organizations and communities, and with those students, parents and staff who use the facility and shall incorporate the desires of the tribal and Indian entities consulted into their plans to the greatest extent feasible.

ECS-064-87

A RESOLUTION OF THE
EDUCATION COMMITTEE
OF THE
NAVAJO TRIBAL COUNCIL

Endorsing the Position of the Navajo Nation Regarding
the Indian Education Amendments of 1987, as
Contained in S 1645 and H.R. 5

WHEREAS:

1. The Education Committee is the standing committee of the Navajo Tribal Council with authority and responsibility to advocate for the Navajo Nation with the Congress of the United States in all matters affecting Navajo Education, ACMA-35-B4; and

2. Both the U.S. Senate and the House of Representatives are considering legislation, Senate Bill 1645 and House of Representatives Bill 5, Title VIII, which will significantly affect the education of Indian children for many years to come; and

3. The Education Committee, with the Navajo Division of Education and representatives of the Navajo Area School Board Association and the Association of Navajo Community Controlled School Boards, have made an extensive review of the provisions of both pieces of legislation in light of the identified education needs of the Navajo people and of Navajo Education laws and policies; and

4. The Education Committee has by vote of its members taken a number of positions regarding the content of these two pieces of legislation, endorsing many provisions and seeking significant amendment of others and in some cases recommending totally new language to better address the education needs of Navajo children; and

5. The Committee has been guided by the following principles and concerns in evaluating the proposed legislation:

a. The need for a firm commitment to the continuation of the BIA funded school system as a ongoing part of the trust responsibility of the government of the United States toward Indian nations and Indian people;

b. the need for a commitment from the BIA and from the Congress to provide a high quality, culturally appropriate education in the BIA funded schools serving tribal members;

c. the need for assurance that Indian tribes exercise the greatest possible oversight and authority over the conduct of education in the BIA funded schools serving tribal members;

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d. the need for assurance that the provision of educational services does not favor BIA operated schools over tribally controlled schools or tribally controlled schools over BIA schools, but allows Indian tribes to look to either kind of school to meet the needs of the Tribe's children as the Tribe may determine most appropriate;

e. the need to eliminate unnecessary red tape in the operation of tribally controlled schools while assuring that these schools are accountable to the tribes and children they serve; and

f. the need to establish a meaningful right of consultation in Indian tribes and organizations.

NOW, THEREFORE, BE IT RESOLVED:

1. The Education Committee of the Navajo Tribal Council supports and endorses the intent of H.R. 5, Title VIII, and S. 1645 to increase Indian control of Indian education and to enhance the quality of education in BIA funded schools.

2. The Education Committee supports the testimony of the Navajo Nation regarding this legislation developed through a process of consultation with Navajo education organizations, and directs that this resolution accompany such testimony when it is submitted to the Senate Select Committee on Indian Affairs.

3. The Education Committee respectfully requests the Congress of the United States to give careful attention to the testimony of the Navajo Nation and the section-by-section commentary prepared to accompany that testimony and incorporate the recommended amendments to this legislation into the law as it is finally enacted by the Congress.

4. The Education Committee requests the Congress to continue its careful oversight of Indian education to assure that the intent of this legislation is fully realized in its implementation.

CERTIFICATION

I hereby certify that the above resolution was considered at a duly called meeting of the Education Committee held at Window Rock, Navajo Nation (Arizona) at which a quorum was present, and that the same was adopted by a vote of 4 in favor, 0 opposed this 25th day of September, 1987.

Daniel E. Joe



Colville Confederated Tribes

P.O. Box 150 - Nespelem, Washington 99155 (509) 634-4711

September 24, 1987

The Honorable Daniel K. Inouye, Chairman
Select Committee on Indian Affairs
United States Senate Washington, D.C. 20510

Re: S. 1645, the "Indian Education Amendments Act of 1987"

Dear Mr. Chairman,

We appreciate the opportunity to offer our comments on S. 1645, the "Indian Education Amendments Act of 1987."

Along with other tribes and organizations throughout Indian country, we would like the Committee to give serious consideration to adding a provision in this bill to elevate the Indian Education Programs (IEP) to a level within the Department commensurate with its responsibilities.

This would insure that this Administration is carrying out its trust responsibility to Indian people and fulfilling Congressional policy.

Currently Indian Education Programs (IEP) are under the Office of the Assistant Secretary for Elementary and Secondary Education (OESE).

In six of the eight years it has been under OESE, that program has had no permanent director.

This has meant no program policy definition for Indian education and brings into question how closely attuned to Indian education needs the Department can be.

Lacking direction and policy, priority to Indian education is viewed as quite low.

Education specialists and administrators for this area are among the lowest paid in the Department.

The Honorable Daniel K. Inouye
September 24, 1987
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Morale suffers and recruitment of capable managers and specialists cannot go forward. Frequently, staff and administrators from within the Department then have to handle Indian education, and they have little familiarity with Indian education program needs.

Restoration of the Office of Indian Education Programs to the level of Assistant Secretary that other programs receive would enable the Department to represent the education needs of Indians nationally and would attract highly trained, qualified, and motivated Indian people to administer the programs.

We hope the Committee will give serious consideration to this recommendation; the reorganization which took place several years ago, creating these problems, took place over the opposition of Indian people.

Thank you for your time and consideration.

Sincerely,



Andrew C. Joseph, Vice Chairman
Colville Business Council
Colville Confederated Tribes

ACJ:ca2

TESTIMONY OF
Lorena Bahe, Executive Director
Association of Navajo Community Controlled School Boards, Inc.
Re: H.R. 5 and S. 1645 Indian Education Amendments of 1987

The Association of Navajo Community Controlled School Boards, Inc. (ANCCSB) is vitally interested in this legislation. We represent eleven Contract Schools in the Navajo Area with a combined enrollment of 2600. H.R. 5 and S. 1645 both addresses many of the critical problems, which our member schools face continually in trying to carry out the provisions of P.L. 93-638 and P.L. 95-561, and to implement the congressionally-mandated policy of Indian control in all matters related to education in the latter law at the community level.

First of all, we wish to express our support and appreciation for the Navajo Nation's position of this legislation. It was arrived at through three full days of intensive hearings and negotiation between representatives of both Contract and Bureau of Indian Affairs-operated schools, the Navajo Tribal Council's Education Committee and administrative staff of the Navajo Division of Education. It represents a genuine consensus of informed opinion and Tribal governmental concern.

In keeping with this Tribal position, we would offer the following comments and recommendations.

To Section 107 of S. 1645 "Administrative Cost", we strongly urge the Senate to incorporate a legislated administrative cost formula, of similar nature to that proposed in H.R. 5, instead of again calling upon the Bureau of Indian Affairs to develop one by regulation. The Bureau of Indian Affairs has had nine years since passage of P.L. 95-561 urged incorporation of the "overhead costs of contracted education functions" in the formula for Bureau

of Indian Affairs-funded schools, and has not proposed any solution to this problem. Instead, there appears to be no consistency whatever in the funding of such costs at existing schools, and the Secretary's recent initiative to fund all contractors, regardless of size and program operated, at a flat 15%, while "consistent", stole from the supposedly "rich" (i.e. those with apparently adequate funding) in order to feed the "poor" (i.e. those the Bureau of Indian Affairs has consistently denied adequate funding in the past).

In short, we question whether the Bureau of Indian Affairs is either competent to develop an equitable formula or trustworthy to do so without hidden agenda, such as seeking to eliminate small contractors, as "uneconomical irritants".

Instead, we are herewith submitting a minor variation of the Administrative Cost formula already proposed by the Association of Community/Tribal Schools for your consideration. It differs from Section 8107 of H.R. 5 in several regards: (a) the language describing the formula has been simplified by incorporating tables with clear operational definitions in place of other subsections of the Bill; (b) it substitutes a fixed dollar amount for the floating average of direct-cost funding introduced by H.R. 5 into Section 1128(c) (2) (A) (iii). The use of an average appears to be subject to too much variation unrelated to actual costs of administration for ongoing contractors; (c) it incorporates provisions for unbiased research and recommendations to the Oversight Committees establishing formula values empirically based on costs of delivering services in the field, and sets these values on a provisionally until such research can be completed; (d) it establishes a phase-in provision, which limits the impact of the provisional values on both contractors and overall costs until the necessary research can

be done to verify or change them. It differs from both H.R. 5 and ACTS proposal, as follows: (a) it contains a broad statement of the purpose of paying such Administrative Costs in the lead paragraph; (b) it eliminates the use of the current ISEP formula, as a means of paying administrative costs, in response to the Bureau of Indian Affairs schools' fears that such a procedure would result in reducing their program funding in order to pay contract schools' administrative costs; (c) it bases calculations on a Direct Cost Base in the second previous year, instead of the immediate previous year, in response to the Bureau of Indian Affairs assertions that immediate previous year data cannot be accumulated accurately in time for use in such calculations and projection of overall costs for appropriations purposes; (d) it exempts certain costs (now exempted from calculation of indirect cost rates and lump sums) from the Direct Cost Base; (e) it allows Tribal organizations for which elementary and secondary education programs are less than half of what is operated under self-determination agreements to choose to stay with the present system, instead of having an education formula become a "tail that wags the dog" for other Tribal programs.

With these provisions, we were assured by representatives of the Bureau of Indian Affairs schools in the Navajo Area (at least) that any objections that they might have had to the H.R. 5 version of a legislated formula had been overcome. We think such a formula is badly needed, and urge the Senate to consider this as an effective compromise version. It may not be the "ideal" formulation, but we believe it is equitable, verifiable, and useful tool to eliminate many of the problems in the present nonsystem

THE ADMINISTRATIVE COST FORMULA "WORKS"
TYPICAL (but hypothetical) SITUATIONS

	SCHOOL A (small)	SCHOOL B (median)	SCHOOL C (large)	TRIBE D (Schl 1)	(Schl 2)	(Schl 3)
DIRECT COST PROGRAMS						
ISER School Operations	\$185,500.00	\$444,400.00	\$1,544,500.00	\$374,000.00	\$274,900.00	\$265,100.00
Chapter 1 Project	\$23,500.00	\$70,954.00	\$247,680.00	\$59,349.00	\$43,132.00	\$57,541.00
P.L. 94-142 SFED Project	\$19,324.00	\$30,000.00	\$18,100.00	\$20,500.00	\$13,100.00	\$23,700.00
Facilities O & M	\$44,200.00	\$54,400.00	\$68,963.00	\$0.00	\$0.00	\$0.00
Other Education Programs	\$21,200.00	\$442,074.00	\$101,791.00	\$0.00	\$0.00	\$0.00
Other non-Ed. Programs	\$0.00	\$171,900.00	\$858,895.00	\$0.00	\$0.00	\$0.00
DIRECT COST BASE (Total)	\$293,924.00	\$1,233,930.00	\$3,481,929.00	\$441,649.00	\$331,132.00	\$348,341.00
12% of Direct Cost Base	\$35,270.88	\$148,071.60	\$417,831.48			
SCHOOL A COMPUTATION	(25 Miles from small town. Deals with Agency in urban area 75 miles away)					
\$33,270.88 + \$300,000		\$335,270.88				
\$293,924 + \$600,000		\$893,924.0			37.51%	
MILES ONE WAY TO:						
Bank	25					
Urban Center	75					
Post Office	25					
Agency Office	75					
Average	49					
Less 20 Miles	29					
Percentage Add-on	0.29%				37.80%	
PROGRAMS ADMINISTERED (In addition to School Operations)						
Adult Education						
Percentage Add-on	0.25%					38.05%
SCHOOL B COMPUTATION	(In urban area 90 miles from Area Office - deals with Area, not Agency)					
\$148,071.60 + \$300,000		\$448,071.60				
\$1,233,930 + \$600,000		\$1,833,930.00			26.61%	
MILES ONE WAY TO:						
Bank	3.5					
Urban Center	5					
Post Office	1.5					
Area Office	90					
Average	25					
Less 20 Miles	5					
Percentage Add-on	0.05%				26.66%	
PROGRAMS ADMINISTERED (In addition to School Operations)						
Adult Education						
Career Development						
Economic Development						
Percentage Add-on	0.75%					27.41%
SCHOOL C COMPUTATION	(In remote area 70 miles from bank. Deals with urban Area Office 135 miles)					
\$417,831.48 + \$300,000		\$717,831.48				
\$3,481,929 + \$600,000		\$4,081,929.00			17.59%	
MILES ONE WAY TO:						
Bank	70					
Urban Center	135					
Post Office	35					
Area Office	135					
Average	93.75					
Less 20 Miles	73.75					
Percentage Add-on	0.74%				18.32%	
PROGRAMS ADMINISTERED (In addition to School Operations)						
Higher Ed						
Adult Ed						
Career Development						
Law Enforcement						
Road Maintenance						
Percentage Add-on	1.50%					19.82%
TRIBE D COMPUTATION	(Multi-school program near town where Agency is located)					
\$134,934.64 + \$300,000		\$434,934.64				
\$1,141,122 + \$600,000		\$1,741,122.00			25.10%	
ONE WAY MILES TO:						
Bank	18					
Urban Center	55					
Post Office	18					
Agency Office	19					
Average	27.5					
Percentage Add-on	0.28%				25.37%	
ADDITIONAL SCHOOL PROGRAMS OPERATED						
TWO						
Percentage Add-on	0.50%					25.87%

HEARING ON S. 1645
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

September 29, 1987

Testimony on Behalf of:

THE PENOBSCOT INDIAN NATION
THE PASSEMAQUODDY TRIBE

Mr. Chairman and Members of the Committee:

The Passamaquoddy Tribe and Penobscot Nation are currently operating three newly constructed Indian contract schools on their respective reservations at Pleasant Point, Indian Township, and Indian Island. Up until FY 1987, all three schools were receiving both ISZF funding from the Bureau of Indian Affairs and Impact Aid funding. As a consequence of the recent changes in the federal regulations governing Impact Aid funding eligibility, the three schools in Maine, as well as a number of other schools through out the country, are experiencing significant reductions in school funding. While these reductions will no doubt be painful and require programatic or other operational adjustments at many of the contract schools, the Pasamaquoddy Tribe and Penobscot Nation are subject to unique federal legal constraints which make this option both illegal and unviable.

After many years of intense litigation and political negotiation, the land claims of the tribes in Maine were settled pursuant to two legislative measures in 1980. The first Act was "An Act to Implement the Maine Indian Claims Settlement Act," P.L. 1979, c. 700 (hereinafter referred to as the "Maine Implementing Act"). This Act was enacted by the Maine Legislature and signed into law by the Governor of Maine on April 30, 1980. It encompassed the terms and conditions negotiated between the State of Maine and the tribes.

The second Act was the "Maine Indian Claims Settlement Act of 1980", 25 U.S.C. §§ 1721-35 (hereinafter referred to as the "Settlement Act"). This Act encompassed the tripartite

(1)

agreement between the tribes, the State and the Federal government. It also further clarified the operation of some aspects of the Maine Implementing Act and specifically "approved, ratified and confirmed" the provisions of that Act. 25 USC §1725 (b)(1).

Pursuant to the Maine Implementing Act and the Settlement Act, the tribes in Maine have the status of Federally recognized tribes but also the unique status of municipalities and are subject to state criminal, civil and regulatory laws except for certain specified matters. The Settlement Act provi

The Passamaquoddy Tribe, the Penobscot Nation, and their members, and the land and natural resources owned by, or held in trust for the benefit of the tribe, nation, or their members, shall be subject to the jurisdiction of the State of Maine to the extent and in the manner provided in the Maine Implementing Act and that Act is hereby approved, ratified, and confirmed.
25 USC §1725 (b)(1).

The Maine Implementing Act provides:

Except as otherwise provided in this Act, Indian nations, and tribes and bands of Indians in the State and any lands or other natural resources owned by them, held in trust for them by the United States or by any other person or entity shall be subject to the laws of the State and to the civil and criminal jurisdiction of the courts of the State to the same extent as any other person or lands or other natural resources therein. § 6204

* * * * *
...The Passamaquoddy Tribe and the Penobscot Nation within their respective Indian territories, ... shall be subject to all the duties, obligations, liabilities and limitations of a municipality of and subject to the laws of the State... §6206 1.

The Settlement Act further provides:

Except as otherwise provided in this Act, the laws and regulations of the United States which are generally applicable to Indians, Indian nations, or tribes or bands of Indians or to lands owned by or held in trust for Indians, Indian nations, or tribes or bands of Indians shall be applicable in the State of Maine, except that no law or regulation of the United States... (C) which

(2)

affects or preempts the civil, criminal, or regulatory jurisdiction of the State of Maine, including, without limitation, laws of the State relating to land use or environmental matters, shall apply within the State 25 USC §1725 (h)

The Senate Committee Report discussing this section of the Settlement Act states:

Subsection 6(h) provides that, unless otherwise provided in this Act, the general body of Federal Indian law specially applicable to Indians, Indian nations, or tribes or bands of Indians, and Indian trust lands and natural resources shall be applicable to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, their members and their lands and natural resources, and to any other Indians, Indian nations, or tribes or bands of Indians within the State of Maine. However, the application of such Federal law is limited in that, to the extent provisions of such Federal law would affect or preempt the application of the civil, criminal, or regulatory jurisdiction of the State of Maine, such provisions of Federal law or laws shall not be applicable.

* * * * *

The phrase "civil, criminal, or regulatory jurisdiction" as used in this section is intended to be broadly construed to encompass the statutes and regulations of the State of Maine as well as the jurisdiction of the courts of the State. The word "jurisdiction" is not to be narrowly interpreted as it has in cases construing the breadth of the Public Law 83-280 such as Bryan v. Itasca County, 426 U.S. 373 (1976). Senate Rpt. No. 96-957 at 30-31.

From the foregoing discussion, it is clear that the Settlement Act specifies that the jurisdictional relationship between the tribes and the State of Maine is governed by the provisions of the Maine Implementing Act. That Act specifies that the tribes are municipalities and subject to the criminal, civil and regulatory laws of the State (with limited specified exceptions not relevant here). The Maine Implementing Act was ratified and confirmed by the U.S. pursuant to the Settlement Act.

(3)

Thus, because of the tripartite settlement agreement as encompassed in the Settlement Act and the Maine Implementing Act, the Indian schools in Maine, unlike Indian schools anywhere else in the country, must comply with state education standards and requirements.

The State of Maine recently enacted and has begun to implement the "Maine Education Reform Act of 1984", P.L. 1984, c. 859 (Dec. 11, 1984). The Act mandates that all schools in the State of Maine provide a substantially broad education curriculum, minimum teacher salaries, maximum student/teacher ratios, instructional staff development, long range planning and numerous other minimum but costly requirements. For example, curriculum requirements include: Elementary Guidance programs; Gifted and Talented programs; Teacher Certification Support Teams; Physical Education and Health programs; Fine and Performing Arts programs, and Special Education programs. Minimum teacher salaries begin at \$15,500 and are graduated upward based upon experience, performance and education. All three Indian schools in Maine have a relatively high number of special needs students requiring lower student/ teacher ratios than is required for delivery of the basic curriculum.

The State of Maine provides partial supplemental public school grant funding to the three Indian schools, primarily in support of the tribes' secondary programs for reservation students who attend schools off the reservation and for those few non-Indian reservation residents.

(4)

If schools fail to provide and meet the requirements mandated by the Maine Education Reform Act of 1984, such schools are subject to penalties and fines equal to whatever the school would have had to expend to be in compliance with State requirements. Thus, if the three Indian schools in Maine are forced to drastically lay off teachers, eliminate mandated curriculum programs and take other measures which would result in non-compliance with state standards, such action would only further cripple the functioning of the schools by subjecting the schools to fines and other legal action by the State Attorney General.

The Instructional Program costs of the three Indian schools in Maine are in line with that of other schools in Maine of comparable size. Other municipalities have been required to meet the higher costs of education imposed by the Maine Education Reform Act of 1984 out of sharply increased local property taxes. This option is unavailable to the tribes in Maine given the Trust land status of the reservation lands.

The Maine Indian Education Department has analyzed the respective options of ISEP versus Impact Aid funding and neither funding source would currently enable the Indian schools to comply with the State education standards. Standards which the tribes in Maine are legally subject to, (unlike other tribes throughout the country), because of the provisions of the Settlement Act and Maine Implementing Act. Given the unique legal status of the tribes in Maine, they are truly caught in a "Catch 22" situation. They are subject to State law and educational standards; neither

ISEF nor Impact Aid provide sufficient funding to comply with State education standards; and failure to meet such standards subjects them to a further loss of State funding and other legal action resulting in a further crippling of their school operations.

The shortfall in essential funding under ISEF for the three schools in FY 1988 is projected at \$397 000. Based upon the unique legal status of the Tribes in Maine, both the House and Senate Appropriations Committees have specifically added \$397,000 for Maine Indian Education in their proposed FY 1988 appropriations bills.

The House Appropriations Committee Report states:

The funds for Maine Indian education are needed because of the requirements of the Maine Indian Claims Settlement Act of 1980, which made the Maine Indian schools subject to State law. As such, the schools must meet the requirements of the Maine Education Reform Act of 1984, or be subject to penalties and fines. Up until recently, the schools were able to meet these extra requirements with the assistance provided under the Department of Education's Impact Aid program; however, new regulations have removed the school's eligibility for these funds. The Committee urges the Bureau and the authorizing committee to address this situation as quickly as possible. Until a longer term solution is found, the Committee has included the \$397,000 required for the three elementary schools to remain in operation and compliance with the law, for one-year only. House Report 100-171, at 43-44, (emphasis added).

Based upon the House Appropriations Report language, it is clear that their commitment to earmark the necessary funding for the three schools is "...for one year only." The Committee specifically recommends that a "longer term solution" be found and "...urges the Bureau and the authorizing committees to address this situation as quickly as possible."

(6)

The Bureau of Indian Affairs has recently advised us that they have no authority to address the problem absent a change in the authorizing statute. Therefore, the only remedy available to the Tribes is to request that S. 1645 be amended in such a way as to ensure that tribal schools which are subject to state jurisdiction and thus state education requirements be funded at all levels sufficient to meet those requirements. We are therefore requesting that the ISEF formula be amended to require that ISEF per pupil funding be weighted to the extent necessary to meet state mandated education requirements.

The projected shortfall in needed ISEF funding for the three schools in FY 1989 is \$447,585 and in FY 1990 it is \$437,873. Without this funding the three schools in Maine will not meet the state education requirements which they are mandated to meet and this will result in the loss of funding from the State of Maine and the imposition of fines by the State.

The three schools, all recently constructed would be closed.

Senator William S. Cohen, Senator George Mitchell and Congresswoman Olympia Snowe are all in support of the Tribal requested amendment.

We thank you for this opportunity to present this testimony.

COMMITTEE
FOREIGN AFFAIRS
JOINT ECONOMIC COMMITTEE
SELECT COMMITTEE
ON AGRICULTURE

WASHINGTON OFFICE
2484 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20516-1902
(202) 225-8306

OLYMPIA J. SNOWE
20 DISTRICT, MAINE

**Congress of the United States
House of Representatives**

Washington, DC 20515

May 20, 1987

MARGARET CHASE SMITH
FEDERAL BUILDING
202 MALDEN STREET, ROOM 209
BANGOR, ME 04401-4960
(207) 845-0432

TWO GREAT FALLS PLAZA
SUITE 700
BANGOR, ME 04210-5812
(207) 786-2481

187 STATE STREET
POST OFFICE BOX 722
PINEHURST, ME 04780-0722
(207) 784-8124

The Honorable Sidney Yates, Chairman
House Appropriations Subcommittee on
Interior
B-308 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to request your careful consideration of the Passamaquoddy, Penobscot and Penobscot Indian Nation's request for an appropriation of \$396,621 for fiscal 1988 for the reservation schools.

In 1980 the passage of the Maine Indian Land Claims Settlement Act (P.L. 96-420) and the Maine Implementing Act placed the tribes in the unique position of being federally recognized tribes as well as municipalities of the state. The tribal schools, therefore, serve as both Bureau of Indian Affairs contract schools and public schools.

In 1984, the Maine State Legislature enacted the Maine Education Reform Act which requires all schools to go through significant reforms to increase their general standards of education. Schools which are unable to meet the new criteria are subject to penalties and fines equal to whatever the school would have had to expend to be in compliance with state requirements. The need to meet these requirements, along with the loss of Impact Aid for fiscal 1987 have placed the three schools in a serious financial bind.

The tribes' are making a onetime request of \$396,621 in the fiscal 1988 appropriations bill in order to allow the continuation of current education programs while they work to resolve the funding shortage and develop a long range financial plan. The State's tribal leaders have met with your staff to explain the fiscal crisis facing the schools and have prepared a budgetary and legal analysis demonstrating the need for the requested appropriations.

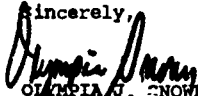
Both tribes have been making significant strides in becoming self-sufficient, and they have placed a special emphasis on the education of their youth as part of their plan for self-

U.S. GOVERNMENT PRINTING OFFICE
1987-2

The Honorable Sidney Yates, Chairman
Page Two
May 20, 1987

sufficiency. Education is a key to the continued progress of both tribes, but without the requested appropriations they will be forced to take a large step backward.

Thank you for the time you and your staff have given to Maine's Indians and to the consideration of this request.

Sincerely,

OLYMPIA J. SNOWE
Member of Congress
2nd District, Maine

OJS:jc

WILLIAM S. COHEN
NAME

United States Senate
WASHINGTON, DC 20510

July 7, 1987

The Honorable Robert C. Byrd, Chairman
Senate Appropriations Subcommittee on
Interior and Related Agencies
SD-114
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing to urge your consideration of a request by the Passamaquoddy and Penobscot Tribes for an appropriation of additional funds in fiscal year 1988 for the reservation schools.

The passage of the Maine Indian Land Claim Settlement Act (P.L. 96-420) and the Maine Implementing Act in 1980 placed the Tribes in the unique position of being federally recognized tribes as well as municipalities of the state. As municipalities, they are subject to state criminal, civil and regulatory laws. The tribal schools therefore fall into the category of being both Bureau of Indian Affairs Contract Schools and public schools.

In 1984, the Maine Legislature enacted the Maine Education Reform Act, which required all schools in the state to undertake significant reforms to increase the general standards of education. As a result of the Settlement Act, the Maine Education Reform Act applies to the Tribes, which are obligated to adhere to its provisions or face fines and penalties. The need to meet these requirements, in addition to the loss of Impact Aid in FY 1987, have placed the Tribes in a serious financial bind.

Enclosed you will find copies of the budget projections of the three tribal schools, which document the cost of school administration as well as the shortfall in funding resulting from the requirements placed on the Tribes. Also enclosed is a legal analysis of the current situation, prepared by the Tribes, which documents the legal requirements that have placed the Tribes in this unfortunate situation. We urge you to review these materials during your consideration of our request.

Honorable Robert C. Byrd
July 7, 1987
Page 2

As you may know, the House Appropriations Committee included in its report to accompany the FY 1988 Interior Appropriations bill, H.R. 2712, language that sets aside \$397,000 for Maine Indian education. The Committee recognized that the Maine Tribes are in a particularly difficult situation that warrants a one-time appropriation, so that during the coming fiscal year the Tribes can determine a long-term solution to their dilemma.

We urge you to concur with the House and appropriate funds sufficient to meet the tribal schools' projected shortfall in FY 88. If you have any questions about this matter, please let us know.

Thank you very much for your attention to our request. We look forward to working with you to resolve this problem.

With best regards, we are

Sincerely,



William S. Cohen
United States Senator



George J. Mitchell
United States Senator

THE HOPI TRIBE



Ivan L. Sidney
CHAIRMAN

Stanley Monanie
VICE-CHAIRMAN

In reply refer to

Senate Select Committee on Indian Affairs
S. 1645 - INDIAN EDUCATION AMENDMENTS OF 1987
Public Hearing in Washington, D.C.
Monday, September 29, 1987

TESTIMONY OF THE HOPI TRIBE

Chairman DeConcini, members of the Senate Select Committee on Indian Affairs, my name is Ivan L. Sidney, Chairman, Hopi Tribe. We appreciate the opportunity to provide our comments and concerns regarding S. 1645 and would like to submit this written testimony for the record as we are unable to present it in person.

Hopi tribal members regard education as a high priority for our children and have consistently expressed an interest in this field as evidenced by our high parental involvement in local educational programs and projects. We feel the Indian Education Amendments of 1987 will, in general, help to improve the level of educational services currently being provided to our children. We would like to comment on the following:

1. Statutory Authority for Bureau Funded Schools: As has been previously submitted to the Assistant Secretary for Indian Affairs, the Hopi Tribe does not support the budget initiatives to transfer operation of the BIA schools to tribes or other third party entities at this time, nor does it support the termination or curtailment of

P O BOX 123 -- KYKOTSMOVI, ARIZONA -- 86039 -- (602) 734-2441

any of its schools, in particular the Phoenix Indian School, without the express consent of tribal governing bodies.

Although we are working on a comprehensive educational system for Hopi, we feel that it is essential that Congress and the BIA allow for sufficient time and funding to enable tribes to make the determination of their capability and desire to operate such schools. They are best able to assess their educational needs and must be allowed to exercise that authority.

The timeline of a six month advance notice for any such consideration is not acceptable as it is too short a period of time to make all the necessary preparations. We recommend that this be done, at a minimum, one full year in advance of the proposed effective date.

2. Emergency and Special Situations: We are particularly interested in the regulations which are to be developed regarding new schools and expansions and agree with the concept that decisions are not to be based on proximity to public education facilities. We look forward to the review/comment period of these regulations.
3. Dormitory Criteria: We are in agreement with the provision for allowing a waiver criteria of the P.L. 95-561 standards with a mandate for the BIA to report on required compliance action.

We strongly recommend that this same consideration be extended to the day schools as well as the report. These schools should not be mandated to adhere to the standards without adequate financing to do so. The Bureau of Indian Affairs must make provisions in not only their FY 88 budget request, but in continuing fiscal years, to continually allow for compliance. At present, our schools are

inadequately financed to do so and require additional funding.

4. Enactment of Regulations: We support the curtailment of the Secretary's authority to revise Indian Education regulations and recommend that additional language be added to mandate tribal input on all future proposals for revisions/additions.
5. Formula Modification: We are concerned with the modifications being proposed in regards to small school adjustment factors in that it may penalize the smaller schools rather than assist them. Although the additional weight factor for 7th & 8th grade students is positive, we feel the base level of funding for the Indian School Equalization Formula (ISEF) MUST be increased. Current funding levels are totally inadequate to support our schools at the levels we desire, much less allow them to meet BIA academic standards. Strong consideration must be given to increasing the ISEF line item allocation.
6. Administrative Cost: We support the proposal of administrative costs to be allocated at an actual need amount rather than a set rate. The differences between schools, location, isolation, etc. must be considered in determination of these funds and should not be established on the assumption that all BIA funded schools are alike.
7. Local Procurement: Provision for acquisition of supplies and equipment for school under \$25,000 without competitive bidding will greatly enhance the effective, efficient operation of our schools.
8. Consultation: We would like to make the following recommendations to this section - a) that the timeline of 6 months be increased to one year; and b) that a mandate of documenting tribal/public input with minimum criteria of what constitutes "consultation" be established.

-3-

We have found that the BIA will often confirm to Congress that "consultation" has occurred, but oftentimes, it is very small and limited due to inadequate advance notice of comment periods, hearing dates, dissemination of proposed legislation and the fact that much of these "consultation" activities are done AFTER the fact. Consequently, our comments are not considered at all, and the final regulations or decisions are the same as ones being proposed in the hearings. We do not consider this "meaningful consultation" and do not appreciate this well-meaning, but paternalistic attitude, of the BIA officials.

9. Indian Employment Preference: We totally support the study of the entire BIA school personnel policies and practices, in particular the analysis of wage comparisons. This is long over-due. We are finding it increasingly difficult to attract and retain good teachers when nearby non-BIA schools are able to compensate them at a higher salary. Review and revision of this entire section will do much to enhance the quality of services to our children.
10. Self-Determination Grants: We are pleased to see the availability of additional funds to contract schools for improving their educational services. We recommend that technical assistance be made available at both the application and award stage rather than only at the rejection level. We support the concept of a three-year grant as it allows for continuity of services and planning.
11. Grant Amounts: We totally support the provision that ensures no reduction in funds can be made from prior amounts funded under contract authority. We have been continually subjected to reductions

in funds after Tribes have assumed BIA programs which seems to indicate the government's unwillingness to fulfill their contract commitments.

The Hopi Tribe sincerely appreciates the opportunity to address our concerns about S. 1645 - Indian Education Amendments of 1987. We will be happy to answer any questions you have on our comments.

PREPARED STATEMENT OF ROGER WILSON, VICE PRESIDENT,
NAVAJO AREA SCHOOL BOARD ASSOCIATION, WINDOW
ROCK, AZ

I wish to thank the Senate Select Committee on Indian Affairs for providing public hearings on this important piece of proposed legislation. It is with law asking the way it is with many other things - Haate can and does make waste.

We have been through a rather grueling experience with this bill, being very critical of many of its provisions and being severely criticised for being critical of it.

We have viewed it as most important for the Navajo Tribe to take a strong and very well-considered position on this legislation which we frankly did not believe to be well thought out and balanced.

We believe that this has now occurred and the Navajo Tribal position is one we support. The BIA education system operates over one third of its total schools including more than one half of its Bureau operated schools in Navajo Nation. We hope that a new bill can be developed which will be more positive in its tone and constructive in its policy direction. The tribes, the Bureau, the school boards, and the Congress are in this thing together. It is our job to make this system work.

We believe that the federal responsibility for education involves a responsibility for ensuring quality education.

We believe that tribes can become full partners in this endeavor but that tribal authority must go hand in hand with tribal responsibility. The BIA education system must develop a high degree of credibility and that can come only from demonstrating results and schools being held accountable. We believed the accountability factors in H.R. 5 to be weak and unworkable. The Navajo position would strengthen accountability, at least in those locations where tribes have agreed to take a more substantial role in accountability functions. We do not wish to see federal trust responsibility for education abrogated in the name of self-determination anymore than we want it abrogated in the name of state responsibility.

We want to emphasize two points which are included in the tribal testimony but not included in H.R. 5 or S.1645. The first of these is the provision making BIA school programs eligible for entitlement funding under Title IV Part A. All other publicly funded schools, including contract schools, are entitled to this funding and we strongly urge inclusion of a new provision in S.1645 to do this.

Secondly, we wish to draw your attention to the section which would put wage grade school employees under the P.L. 95-561 contract educator system and provide for a more reasonable method of establishing their pay schedule.

We strongly request that you carefully consider the positive changes in the Tribe's position and very carefully consider the long term effects of the entire legislation.

Thank you.

P.O. Box 80008
Albuquerque, NM
87198

National
Indian
School
Board
Association

505/884-6820

NATIONAL INDIAN SCHOOL BOARD ASSOCIATION

Testimony Before the

Senate Select Committee on Indian Affairs

The Honorable Daniel Inouye, Chair



September 29, 1987

Presented by: Carmen Cornelius Taylor, Program Director

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COMMITTEE

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ROGER WILSON
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Treasurer

CYNTHIA KIPP
Member-at-Large

On behalf of the membership of the National Indian School Board Association, I want to thank you for the opportunity to testify today for S. 1645, the Indian Education Amendments of 1987.

The National Indian School Board Association's membership consists of school boards from Indian-controlled schools-- primarily BIA-operated and tribal contract -- from throughout Indian country. Our goal has been and continues to be to facilitate the Bureau's Congressionally-mandated policy of "Indian control of Indian affairs in all matters relating to education". We feel this can best be accomplished through parents of Indian children serving on school boards and parent committees in cooperation with their tribal governments.

It is with this policy in mind that ideas and recommendations resulting from numerous study and work groups finally culminated in first, HR 5, Title VIII, and, second, S. 1645. These proposed Indian Education Amendments are a further attempt to assure that the Bureau of Indian Affairs carries out the self-determination policies originally set forth in Public Laws 93-638 and 95-561.

Because this organization was involved throughout the development of the legislation, NISBA is basically in support of the legislation. This testimony will address those areas of the legislation where there are differences between the House and Senate version and areas which could benefit from clarification or expansion.

Section 102. Statutory Authority for Bureau Funded Schools. In light of the 1988 BIA proposed education initiatives, this section is particularly appropriate in order to assure that

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schools are not unilaterally closed, transferred, etc. However, this section seems to provide procedures for the Assistant Secretary to follow for activities which the rest of the section prohibit him from undertaking. Perhaps, the addition of the following language would eliminate that impression:

"Nothing in this subsection shall be interpreted as in any way superceding or modifying the prohibitions contained in subsection (g)(2) of this section".

Section 103. Emergency and Special Situations. Subsection (C) to the proposed subsection 1121 (g)(5) of S. 1645 provides specific timelines within which the Secretary must make provision to reopen a school temporarily closed because of an "unsafe" condition. We appreciate the addition of this language and recommend it be retained in the final version of this bill.

Section 104. Dormitory Criteria. This section addresses the need for waiver requirements and possible alternatives -- much the same as originally provided for in the academic standards. We suggest one further amendment as follows:

"(3) By February 1, 1988, the Assistant Secretary shall submit to the Congress a report detailing the costs associated with, and actions necessary for, complete compliance with the criteria established under this section, and the costs associated with and actions necessary for appropriate alternatives to these criteria".

Section 105. Enactment of Regulations. We support this section and the inclusion of the language proposed for Section 1123 (c) which specifically provides for waiver of regulations when the waiver is for the benefit of an Indian. This language is not included in HR 5. It should be included in the final legislation.

P.O. Box 80008
Albuquerque, NM
87186

National
Indian
School
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Section 107. Administrative Costs. S. 1645 directs the Secre-

tary to develop an administrative cost formula through regulations. We support the concept of a statutory formula. However, we recognize some of the problems with the formula contained within HR.5. Including the costs within ISEP has created some anxiety for BIA-operated schools because insufficient funds for the administrative cost formula could create a disadvantage for BIA operated schools.

This was not the original intent, but if there's room for interpretation, there is a need for clarification in the beginning. Originally, the administrative cost formula dollars were included in ISEP to create more stability and for purposes of a more timely and predictable distribution. Perhaps, this can still be obtained by making the administrative cost formula a sub-activity of ISEP much the same as transportation and school board expenses are currently handled. This puts the dollars under the Office of Indian Education Programs, ties the distribution/allocation to ISEP, but does not potentially harm one group of schools to benefit another.

We support the idea of a three-year phase-in provision. We also support the idea of the Secretary conducting appropriate studies to establish an empirical basis for determining values used in the formula.

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Section 112. Personnel Compensation, Recruitment, and Retention. We are supportive of this section. However, one further recommendation would be to include in the study of salaries, a wage survey of janitorial and cook's wages.

The current situation is that often times these workers make more than the teachers and principals because of the way in which wages are now established. The survey should be amongst comparable positions within state school districts and wages should be established accordingly and placed under the contract system so that school boards/local schools have more control over the hiring of these positions.

Again, thank you for taking time to hear our concerns.

P.O. Box 80008
Albuquerque, NM
87198

National
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505/884-6820

NATIONAL INDIAN SCHOOL BOARD ASSOCIATION

AND

ASSOCIATION OF CONTRACT TRIBAL SCHOOLS

Joint Testimony

Before the Joint Economic Committee

1988 Education Initiatives



September 4, 1987

Presented by: Carmen Cornelius Taylor, Program Director

EXECUTIVE
COMMITTEE

JAMES H. STEELE
President

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BEASLEY DENSON
Treasurer

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Member at Large

On behalf of the membership of the National Indian School Board Association and the Association of Contract Tribal Schools, I want to thank you for the opportunity to testify today on concerns and issues which impact BIA-funded schools. The National Indian School Board Association's membership consists of school boards from Indian-controlled schools -- primarily BIA-operated and tribal contract. In addition, the associate membership is comprised of Indian parent committees and tribal education committees. Member schools are from throughout Indian country and include five day schools here in New Mexico. Our goal has been and continues to be to facilitate the implementation of the Bureau's Congressionally-mandated policy of "Indian control of Indian affairs in all matters relating to education". This is best accomplished through parents of Indian children serving on school boards and parent committees in cooperation with their tribal governments.

The recent education initiative proposing to force tribes to contract the operation of all BIA schools or have BIA contract them out to public schools or other non-Indian entities, actually negates Indian control. "Local control" is best defined by the community in which the school is located. Public Laws 93-638 and 95-561 and subsequent amendments were passed to facilitate control of education by Indian people. If there is a problem with the system, it is that the Bureau has failed to implement various sections of the laws designed to improve the quality of education for Indian children.

Public Law 93-638 requires the Secretary to contract any portion of the BIA program to the Indian tribe(s) that it serves, if the Tribe(s) so request. Because of deep misgivings on the part of some tribes, BIA's implementing regulations include specific assurances that "it is the policy of the Bureau not to impose sanctions against an Indian tribe for either contracting or declining to contract" under PL 93-638.

In other words, tribal governments already have the option to contract if they so desire. The number of schools contracted by tribes is increasing each year in spite of considerable obstacles placed in the path of potential contractors. The contract support system is unstable and seems to get less so with each budget cycle. While it is partially true that an initiative such as the Assistant Secretary proposes might serve as a stimulus to contract now before the opportunity is lost, such contracting might also prove to be hastily done and poorly implemented. It has recently been brought to my attention that some tribes have approached the BIA for planning dollars under 638, but have been told that there are no planning dollars available. It appears that this is one area where BIA could encourage tribes to contract their programs -- by providing planning and start-up costs to assure a successful transition.

Although the Assistant Secretary has stated that academic performance is not the main justification for this initiative, he has frequently made reference to students in BIA-funded schools

"receiving a substandard education," and has cited some test scores. However, when looking at test scores, we must be cautious because the Bureau's scores include an estimated 5,000 special education students in its test score analyses. The CTB/McGraw 1985 Narrative Report states that "overall the scores indicate that the improvements in achievement with respect to national norms reported from 1982 to 1984 continued in 1985". The improvement "from the 1984 scores was the greatest in the upper grades".

It is ironic that the BIA identifies many schools as having initiated new, unique and innovative programs and at the same time proposes to turn these schools over to alternative educational delivery systems. In fact, the BIA -- on page 36 of its budget justification for FY 1988 -- states the "objective of the school operations programs are: (1) to provide high quality basic educational and residential programs to Indian students not served by public or sectarian schools..."

There are, in fact, many high quality BIA-funded schools which exist and are doing many innovative things. Test scores are improving, the number of accredited schools increases each year, and local school boards are taking hold of their leadership roles and are showing real concern over the quality of programs in their schools. A recent survey shows that 59% of the schools are either state accredited, regional accredited, or both; and another 22% have applied for accreditation and are in some stage of that process. There are numerous success stories: right here in New Mexico, two schools will receive formal recognition in October as part of the Department of Education's National School Recognition Program: one contract school -- Santa Fe Indian School and the BIA operated school is Ojilth-ne-dith-hle Community School in Bloomfield. Three BIA funded schools also received awards for having Exemplary Chapter I Projects: again, two here in New Mexico -- Santa Fe Indian School and Wingate Elementary School, and another contract school in the state of North Dakota. Zia Day School continues to produce students who receive Presidential Academic Fitness Awards each year, and this year, one of their students placed first in the Sandoval County Spelling Bee.

The National Indian School Board Association and the Association of Contract Tribal Schools continues to recommend -- as we recommended to the House Appropriations Committee and the Subcommittee on Elementary, Secondary and Vocational Education during their respective hearings last March -- that the Congress take whatever action is necessary to prevent the Secretary of Interior from carrying out the proposed "contract or else" initiative against the expressed wishes of the tribal governments and local school boards. Further, we recommend that the Bureau of Indian Affairs work to improve its delivery system -- not abandon it. Public Law 95-561 provides a vehicle for what could be a model school system if it became a priority to carry out the law -- both the spirit and intent as well as the technical mandates.

In 1979 and 1993, the Bureau did make a concerted effort to implement 95-561. Regulations were pushed through, training was conducted, agreements were developed, etc. Since that time, we have often observed a reversed trend in that much of the policy-setting and decision-making has been pulled back to the central office level.

I have heard that Assistant Secretary state that a "national system of education will not work -- it must be a local system...". Very few people would disagree with that type of philosophy. Certainly, as an organization which promotes leadership through school boards, we would support ideas which facilitate local control. However, 95-561 never intended for the BIA system to be a national system. The reverse is true -- more and more of the decisions and control was to be spun off to the local communities. The only real function of the Central Office should be to set some very broad policies via the existing set of Policy regulations and to ensure that a student count is taken so that funds may be allotted.

When addressing the issue of increased local control, one must examine the current difficulties Indian communities have getting Indians on public school boards. According to a 1986 American School Board Journal, only .9% of the board members in public schools are American Indian. Present school boards in BIA-operated and tribal contracted schools are Indian and are elected or appointed in accordance with tribal law and delegations of authority. For your information and review, I am providing you a copy of a BIA School Board Profile/Directory which makes some comparisons nationally. Page 18 of the document also provides a comparison of how public school boards, BIA boards, and the general public rank educational issues and concerns.

Other examples of non-implementation are 1) a detailed plan to bring educational facilities into compliance with health and safety standards; 2) regulations which modify the personnel system; 3) changes in the ISEP regulations; 4) annual reports to Congress which include recommendations for improving local control efforts; and numerous other provisions contained within 95-561, 98-511 and 99-89. This non-implementation has, once again, resulted in still more amendments -- HR 5 and the companion S 1645. How many more times do we try "to fix" what really was already provided for under the original 1978 law, 95-561?

In addition to concern over the 1988 education initiatives, NISBA is concerned over other issues which I would like to briefly mention at this time:

Of particular concern is the increasing gap between salaries of teachers in BIA schools and salaries of nearby state public school districts. Although 95-561 includes a provision whereby a position could receive an additional 25% to the basic rate of

pay, the Bureau has not utilized this provision to the advantage of the local schools. In cases where it could be used, the schools do not always have the dollars. Two years ago, we worked on a provision which would have authorized a separate sum of money for merit and other pay provisions. However, the BIA opposed it and the provision was stricken from a later version of the legislation. NISBA recommends that in order to have a clear picture of this problem that a study be conducted which would compare salaries of BIA teachers with teachers in their respective states. For your information, I am attaching an NEA survey of average salaries. The BIA is falling further and further behind in most states and this contributes to recruitment and maintaining good teachers.

The status of wage grade employees needs to be reviewed and some alternatives for change developed. Not only would it increase local control but money would be saved as well. Currently, cooks and bus drivers make salaries comparable to principals and teachers and school boards have no say in the selection of these individuals in many locations. This problem has to do with the manner in which surveys are conducted for establishing wage grade pay scales.

One lingering problem is the timeliness of receiving final allotments. Although the BIA did get out earlier allocations this year, it is still mid-year before a school actually knows what their budget is -- hardly conducive to good planning and sound financial management and accountability. Authorization already exists for both forward funding and advance funding; it is not being utilized. This is another case of implementing what is already authorized.

- Incentives to contracting schools must be provided so that tribes find it desirable to run the schools themselves. And for those locations who find it more desirable to remain a BIA-operated school with school boards functioning under tribal delegations of authorities and 561 regulations, there should be a system which promotes local control to the fullest extent possible.

It is the position of the National Indian School Board Association that the energy currently being expended on trying to identify alternative delivery systems could be better spent on making the present system work.

Again, thank you for your concern about the education of Indian children. Please do not hesitate to contact me if I can provide additional information or clarification.

Charting the USA

Teacher pay range: \$18,095 to \$41,480

The average USA teacher made \$25,313 and school systems spent an average of \$3,723 per pupil in 1985-86, according to a National Education Association survey. Total teachers: 2,495,000, up from 2,211,000 in 1980. Alaska, the biggest spender, paid teachers an average of \$41,480 with per-student costs of \$8,349. South Dakota teachers earned the least, \$18,095. Utah, 32nd in teacher salaries, spent least per pupil, \$2,297. The NEA calculated that public schools averaged nearly 18 students per teacher in elementary and secondary schools. Pay and cost per student in 1985-86:

State	Pay	Costs	State	Pay	Costs
Ala.	\$22,934	\$2,729	Mont.	\$22,482	\$3,947
Alaska	41,480	8,349	Neb.	20,939	3,285
Ariz.	24,640	2,829	Nev.	25,610	2,932
Ark.	19,538	2,642	N.H.	20,263	3,114
Calif.	29,132	3,608	N.J.	27,170	5,536
Colo.	25,892	4,042	N.M.	22,644	3,402
Conn.	26,610	4,888	N.Y.	30,678	5,710
Del.	24,624	4,517	N.C.	22,795	3,366
D.C.	33,990	5,020	N.D.	21,816	3,059
Fla.	22,250	3,731	Ohio	24,500	3,547
Ga.	22,080	2,980	Okla.	21,419	2,752
Hawaii	25,845	3,766	Ore.	25,788	4,123
Idaho	20,969	2,509	Pa.	25,853	4,168
Ill.	27,170	3,621	R.I.	29,470	4,669
Ind.	24,274	3,159	S.C.	21,570	2,920
Iowa	21,690	3,568	S.D.	18,095	2,967
Kan.	22,644	3,914	Tenn.	21,800	2,533
Ky.	20,840	2,853	Texas	25,160	3,429
La.	20,460	3,124	Utah	22,341	2,297
Maine	19,583	3,346	Vt.	20,325	3,554
Md.	27,186	4,349	Va.	23,382	3,594
Mass.	26,900	4,642	Wash.	26,015	3,705
Mich.	30,168	3,782	W.Va.	20,627	2,821
Minn.	27,360	3,982	Wis.	26,525	4,247
Miss.	18,443	2,305	Wyo.	27,224	5,440
Mo.	21,974	3,156			

Source: National Education Association

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